



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 15-00196
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: Cathryn E. Young, Esq.

May 6, 2016

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Under the guidelines for Foreign Preference, it was alleged that Applicant was a dual citizen of Colombia and that United States. He possessed, renewed, and used a Colombian passport to enter and exit Colombia after becoming a U. S. citizen. However, he destroyed his Colombian passport in the presence of his facility security officer (FSO) in July 2012. He also formally renounced his Colombian citizenship with the Colombian embassy. Security concerns were also raised under the guideline for Foreign Influence because he has a mother, stepfather, mother-in-law, cousin, and other extended family members in Colombia. Security concerns raised under Foreign Preference and Foreign Influence are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On September 3, 2015, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the Guidelines for Foreign Preference and Foreign Influence. The action was taken under Executive Order (EO) 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) effective for cases after September 1, 2006.

Applicant answered the SOR on September 28, 2015, and requested a hearing before an administrative judge. The case was assigned to me on February 1, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 5, 2016, scheduling the hearing for March 3, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 and 2, which were admitted without objection. The Government also offered documents pertaining to Colombia, marked GE I, for administrative notice. Applicant offered Exhibits (AE) A through L, which were admitted without objection. Applicant testified on his own behalf. The record was left open until March 17, 2016, for Applicant to submit additional exhibits. On March 9, 2016, Applicant submitted one post-hearing exhibit, marked AE M. Department Counsel had no objections and it was admitted. DOHA received the transcript of the hearing (Tr.) on March 11, 2016.

### **Findings of Fact**

Applicant admitted the SOR allegations 1.a.1, 1.a.3, and 2.a through 2.e. He denied allegation 1.a.2. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 42 years old. He was born in Colombia and immigrated to the United States in 1987, at the age of 14. Upon graduating from high school, he served in the U.S. Air Force from 1991 to 1995. He was naturalized as a U.S. citizen in 1995. He worked for a telecommunications company for 13 years, prior to joining a Government contractor's company in October 2011. He is married and has no children. His wife is a dual citizen of the U.S, and Colombia. (GE 1; GE 2; AE C; AE L; Tr. 18-26, 33.)

In July 2006 Applicant renewed his Colombian passport. It was to be valid until July 2016. He used it to travel to Colombia twice, including a year-long stay in Colombia from 2007 to 2008, while his wife finished up her medical training. However, upon learning of the DoD security clearance regulations through his current employer, he destroyed his Colombian passport. His FSO witnessed its destruction and wrote a letter to that effect. Since destroying his passport, he has traveled to Colombia three times successfully using his U.S. passport. (GE 1; E B; Tr. 34.)

On March 9, 2016, Applicant formally renounced his Colombian citizenship, through the Colombian consulate. His petition for renunciation was granted. He no longer possesses Colombian citizenship. (AE M.)

Applicant's mother and stepfather are citizens and residents of Colombia. Applicant speaks to his mother once per month and his stepfather once every-other month. His mother is 66 years old and his stepfather is 65. They worked and resided in the U.S. from 1991 to 2007. They retired to Colombia, but intend on moving back to the U.S. eventually. They are supported by their U.S. Social Security income and monies

they received from four rental properties they own in Colombia. Applicant does not stand to inherit those properties. Applicant testified he is not close to his parents. He noted that his sister is a U.S. resident and resides in New York. (Tr. 27-31, 48.)

Applicant's mother-in-law is a citizen and resident in Colombia. She is 86 years old. She is not employed outside the home. She is supported by her three sons, Applicant's brothers-in-law. Applicant speaks to her and his brothers-in-law by phone twice per year on holidays. Applicant's wife is close to her mother and visits her annually. Applicant also visits his in-laws when he is in Colombia. (Tr. 40, 58.)

Applicant has cousins that are Colombian residents and citizens. One of his cousins was employed for approximately six months by the Minister of Culture in Colombia. The Ministry of Culture is involved with cultural affairs and is not an intelligence agency. That cousin is now unemployed. (GE 2; Tr. 42-43.) Applicant has minimal contact with all of his cousins and only sees them at family reunions once per year if he visits Colombia. He last saw his Colombian extended family members in January 2015. He chose not to travel to Colombia with his wife in January 2016 due to the concerns identified on the SOR. He has no email or phone contact with his extended Colombian family members. They do not work for the Colombian Government or other governmental agency. (GE 2; Tr. 43-44.)

Applicant has no financial interests in Colombia. He owns a home in the U.S. and has all of his assets here, including a retirement fund. He does not plan to return to Colombia. He testified he is grateful for the opportunities he has in the U.S. and has "always loved this country." (AE G; AE H; AE I; Tr. 45-46, 48.)

Applicant presented seven letters of recommendation from supervisors, colleagues, and friends. Those letters reflect that Applicant is a highly valued and dedicated employee. His supervisor noted that Applicant displays "a high degree of integrity, responsibility, and leadership." All consider Applicant a trustworthy person. (AE D.) His annual performance evaluations indicate Applicant is "intelligent, hardworking and dedicated." He performs at an "outstanding" level. (AE F.) He has also been awarded a number of certificates and decorations for his outstanding service while in the Air Force. His DD Form 214 reflects he received the Air Force Achievement Medal; the Air Force Commendation Medal; the Air Force Training Ribbon; the National Defense Service Medal; the Armed Forces Expeditionary Medal; and the Air Force Good Conduct Medal. (AE K.) He is involved in his community through his church. (Tr. 48.)

The Department of State warns U.S. citizens of the dangers of travel to Colombia. U.S. Department of State documentation verifies that 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. A June 5, 2015 travel warning issued by the U.S. Department of State warns U.S. citizens about the dangers of traveling to Colombia. Dangers in Colombia include: potential for narco-terrorist violence in some rural areas and cities; the potential for violence by terrorists and other criminal elements in all parts of the

country; terrorists and criminal organizations kidnap and hold persons of all nationalities; and human rights violations. Two Colombian organizations have been placed on the Foreign Terrorist Organizations list maintained by the Secretary of State. (HE I.)

## **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 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 C, Foreign Preference**

The security concern relating to the guideline 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. One is 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.

Applicant was a dual citizen of the United States and Colombia. He possessed and used his Colombian passport that he renewed after becoming a U.S. citizen. The evidence is sufficient to raise the above disqualifying condition.

Conditions that could mitigate foreign preference security concerns are described under AG ¶ 11. Two are applicable:

(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 his Colombian citizenship by renewing his Colombian passport in 2006. He chose to use that renewed passport and travel to Colombia, after he became a U.S. citizen. However, he has destroyed his Colombian passport and officially renounced his Colombian citizenship. AG ¶¶ 11(b) and 11(e) provide mitigation for the security concerns raised by his exercise of his former Colombian citizenship rights.

## **Guideline B, Foreign Influence**

The security concern relating to the guideline 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. Two 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
- (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's mother, stepfather, mother-in-law and extended family are citizens and residents in Colombia. Applicant keeps in contact with his mother, stepfather, and mother-in-law. His wife is close to her mother. He also visits his extended family when he travels to Colombia. His cousin was employed by the Colombian government for six months, but is now unemployed. He has substantial contacts in Colombia that could create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

However, to be fully applicable, AG ¶ 7(a) requires substantial evidence of a heightened risk. The heightened risk required to raise one of these disqualifying conditions is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. Terrorist groups and other criminal organizations operate within Colombia. They participate in kidnappings and other criminal activities. Further, the government of Colombia has been identified as committing human rights violations. In this instance, a heightened risk is present. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate foreign preference security concerns are described under AG ¶ 8. One is fully applicable:

(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 interests in favor of the U.S. interests.

Applicant has demonstrated that, while he is in contact with his family in Colombia, there is no conflict of interest, because his sense of loyalty or obligation to Colombia is minimal. Further, he has deep and longstanding loyalties to the U.S. He has been in the United States for more than half of his life, immigrating here at age 14. After he graduated from high school, he served the U.S Air Force for four years, prior to becoming a naturalized U.S. citizen. He plans to remain in the United States permanently. He has formally renounced his Colombian citizenship by actively taking steps through the Colombian consulate to have it rescinded. Applicant presented evidence of substantial ties to the United States, including assets in the United States, his community service, and his home purchase. He can be expected to resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) applies.

### **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. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is well respected by his supervisor and colleague who wrote letters behalf. His ties to Colombia are distant. He has become entrenched in the American way of life. He represents little risk. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Foreign Preference and Foreign Influence 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.1:	For Applicant
Subparagraph 1.a.2:	For Applicant
Subparagraph 1.a.3:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	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.

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Jennifer I. Goldstein  
Administrative Judge