



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



In the matter of: )  
)  
) ISCR Case No. 14-03379  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: [Applicant’s husband], Personal Representative

05/12/2015

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On October 30, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. 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 November 24, 2014, and requested a hearing before an administrative judge. The case was assigned to me on March 10, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 13, 2015, scheduling the hearing for April 2, 2015. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on April 9, 2015.

## Procedural and Evidentiary Rulings

### Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Peru. The request was not admitted in evidence but was included in the record as Hearing Exhibit (HE) I. Applicant did not object, and I have taken administrative notice of the facts contained in HE I. The facts are summarized in the written request and will not be repeated in the Findings of Fact. Reference to some of the facts contained in HE I will be made in the Analysis section.

### Evidence

Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection.

### Findings of Fact

Applicant is 43 years old. She is applying for a security clearance for the first time. She worked for a defense contractor when she had an interim clearance. She is being sponsored for a security clearance by a defense contractor who will employ her if she obtains a clearance. She is married with two adult stepchildren.<sup>1</sup>

Applicant was born in Peru to Peruvian parents. She attended college in Peru for a period, but she did not earn a degree. She worked for the Peruvian government in counter-narcotics for more than ten years. That job involved working in cooperation with the U.S. Government.<sup>2</sup>

Applicant's husband is a retired U.S. service member. They first met in Peru when he was working there for the U.S. Government. They met again about ten years later when they were both working in Afghanistan. She came to the United States in 2006, and they married the same year. She became a U.S. citizen in 2011. Applicant worked with the U.S. Government on a U.S. facility in a foreign country for about three months in 2012 and 2013. She surrendered her Peruvian passport to her facility security officer in 2013. The passport will expire in about three months.<sup>3</sup>

Applicant's parents, siblings, and their spouses are citizens and residents of Peru. Her father is retired. There is no indication that any of her family members have any direct ties to narcotics trafficking or Peru's intelligence services.<sup>4</sup>

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<sup>1</sup> Tr. at 24, 47-49, 55; GE 1; AE B.

<sup>2</sup> Tr. at 21, 54-56; Applicant's response to SOR; GE 1; AE A-C.

<sup>3</sup> Tr. at 18, 22-24, 43-44, 50-53; Applicant's response to SOR; GE 1-3; AE A-C.

<sup>4</sup> Tr. at 40-41, 45-46, 50-51; Applicant's response to SOR; GE 1, 2; AE B.

Applicant maintains sporadic contact with people she worked with in the Peruvian government. She has not visited Peru since 2011. She talks to her family in Peru about once or twice a month, and she maintains e-mail contact with one of her siblings.<sup>5</sup>

Applicant has a retirement account in Peru that is based upon her employment with the Peruvian government. The retirement account is valued at about \$20,000 to \$30,000 in U.S. currency. Applicant expected the Peruvian government to release the funds to her once she became a U.S. citizen, but it has failed to do so. The funds may be released to her after she has been a U.S. citizen and pays U.S. taxes for five years. She had bank accounts in Peru, but those accounts have been closed or have a minimal amount in them.<sup>6</sup>

Applicant and her husband own assets in the United States valued at about \$500,000 to \$600,000. She stated that her allegiance lies with the United States. She stated that she would report any attempt to use her family in Peru or her retirement account against her.<sup>7</sup>

### **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."

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,

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<sup>5</sup> Tr. at 21, 41, 45, 50; GE 1, 2.

<sup>6</sup> Tr. at 31-35, 40, 51-52; Applicant's response to SOR; GE 2; AE A-C.

<sup>7</sup> Tr. at 35-40, 44-47.

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;

(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

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant's parents, siblings, and their spouses are citizens and residents of Peru. She maintains sporadic contact with people she worked with in the Peruvian government. She has a retirement account in Peru that is valued at about \$20,000 to \$30,000 in U.S. currency. Peru has been the world's foremost producer of cocaine. It also continues to have human rights problems.

Applicant's contacts in Peru and her Peruvian retirement account create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a), 7(b), and 7(e) 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.;

(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

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

I considered the totality of Applicant's ties to Peru. 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.<sup>8</sup>

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the

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<sup>8</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. 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, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Narcotics trafficking is a significant problem in Peru. Applicant helped Peru and the United States fight that problem for ten years. She also assisted the United States in Afghanistan and on a U.S. facility in a foreign country. 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 Peruvian government 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. I also find that Applicant's Peruvian retirement cannot be used effectively to influence, manipulate, or pressure her. AG ¶¶ 8(a), 8(b), and 8(f) 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 Guideline B in my whole-person analysis.

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 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 B:	For Applicant
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Subparagraphs 1.a-1.c:	For Applicant
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### **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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Edward W. Loughran  
Administrative Judge