



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



In the matter of: )  
)  
) ISCR Case No. 14-06152  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

06/28/2016

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant mitigated the foreign preference concern by surrendering her passport to her facility security officer (FSO) in July 2014. She has also mitigated the concerns raised by her relationships with relatives who are citizens of the Republic of Colombia (Colombia). Clearance is granted.

**Statement of the Case**

On August 25, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence and foreign preference guidelines.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant a security clearance.

Applicant answered the SOR and requested a decision without a hearing.<sup>2</sup> Department Counsel submitted its written case on October 26, 2015. A complete copy

<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

<sup>2</sup> GE 1.

of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on November 3, 2015, and provided a response. The case was assigned to me on December 4, 2015. The items appended to the Government's brief are admitted as Government's Exhibits (GE) 1 through 4. The documents provided by the Applicant are admitted to the record as Applicant's Exhibits (AE) A through D.<sup>3</sup> All the documents are admitted without objection.

### **Procedural Issues**

In the text of the FORM, Department Counsel withdraws SOR ¶ 2.e, which alleges that Applicant's parents-in-law are citizens and residents of Colombia. Applicant disclosed in her security clearance application, dated April 2014, that both of her in-laws were naturalized U.S. citizens living in the United States.<sup>4</sup> In her answer to the FORM, Applicant provided copies of her in-laws' U.S. passports.<sup>5</sup>

### **Findings of Fact**

Applicant, 41, has worked for a federal contractor since December 2010. This is her first application for a security clearance. Originally from Colombia, Applicant immigrated to the United States in June 1999 and became a naturalized U.S. citizen in August 2005. She married her husband, who is also a naturalized U.S. citizen from Colombia, in July 1999. They have one child, 10, who is a U.S. citizen by birth. Applicant sponsored her mother's immigration to the United States from Colombia. She has held U.S. permanent resident status since 2006 and resides with Applicant in the home Applicant and her husband have owned since 2004.<sup>6</sup>

Applicant has several relatives who are citizens and residents of Columbia. Her father, 71, is retired. According to Applicant, her father plans to remain in Colombia with his new family. Applicant's sister, 40, works in the private sector in an unspecified occupation. Applicant maintains weekly telephonic contact with her father and sister. Applicant has two half-sisters, ages 28 and 30. She does not know what they do for a living and only maintains contact with them approximately every two years when she sees them in person.

According to information from the U.S. State Department, Colombia has experienced issues with paramilitary groups, and transnational criminal and narcotics trafficking organizations. Two of the paramilitary groups, the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN), have been

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<sup>3</sup> Applicant submitted a copy of the FORM, her answer to the SOR, and portion of the Directive in response to the FORM. These documents are not admitted into evidence, but remain in the correspondence file.

<sup>4</sup> GE 2.

<sup>5</sup> AE B.

<sup>6</sup> GE 1-2.

designated as Foreign Terrorist Organizations by the State Department. None of Applicant's Colombian relatives are affiliated with any foreign government, military, security, defense, industry, foreign movements, or foreign intelligence service. In 2015, the U.S. State Department issued a warning to Americans traveling to Colombia, citing potential violence by terrorist groups and criminal organizations.<sup>7</sup>

In 2009, the Colombian government issued Applicant a passport set to expire in 2019. She used the passport to enter Colombia after becoming a naturalized U.S. citizen in 2007, 2009, 2010, and 2012. In July 2014, Applicant surrendered her Colombia passport to her FSO, who destroyed the document. The FSO indicated in a memorandum to the DOD CAF that any attempt by Applicant to regain access to the passport will be reported to the DOD CAF.<sup>8</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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

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

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<sup>7</sup> GE 1-3.

<sup>8</sup> GE 1; AE A.

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**

### **Foreign Preference**

Security concerns involving foreign preference arise when an individual acts in such a way as to indicate a preference for a foreign country over the United States.<sup>9</sup> The SOR alleges that Applicant held a Colombian passport issued in 2009. While this was true at the time Applicant completed her security clearance application in June 2014,<sup>10</sup> she surrendered the passport to her FSO in July 2014, and it was destroyed. The foreign preference concern is mitigated.<sup>11</sup>

### **Foreign Influence**

“[F]oreign 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.”<sup>12</sup> The SOR alleges that Applicant’s mother is a citizen of Colombia residing in the United States. The SOR also alleges that Applicant’s father, sister, and two half-sisters are citizens and residents of Colombia.

While the mere possession of close ties with foreign family members or friends is not disqualifying as a matter of law, a close relationship with even one person living in a foreign country is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. A close relationship with a person who is a resident and citizen of a foreign country can be disqualifying if the contact creates a heightened risk of foreign exploitation, inducement, manipulation,

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<sup>9</sup> AG ¶ 9.

<sup>10</sup> AG ¶ 10(a).

<sup>11</sup> AG ¶ 11(e).

<sup>12</sup> AG ¶ 6.

pressure or coercion;<sup>13</sup> or if the relationship could create a potential conflict of interest between the applicant's obligation to protect sensitive information or technology, and his desire to help a foreign person.<sup>14</sup> Both disqualifying conditions apply. Applicant's relationship with her mother, a citizen of Colombia residing in the United States, could raise a conflict of interest. Applicant's relationships with her foreign relatives in a country where paramilitary and criminal organizations are a potential threat to U.S. interests are enough to establish a heightened risk.

However, the record contains sufficient information to mitigate the foreign influence concerns. Applicant's mother has resided in the United States as a permanent resident for 10 years. The record does not contain any information suggesting that Applicant's mother maintains any ties to Colombia that could create a conflict of interest.<sup>15</sup> While Applicant's relationship with her Colombian relatives cannot be considered casual, their positions and activities in Colombia are such that it is unlikely to put Applicant in a position of having to choose between the interest of her foreign relatives and U.S. interests. None of Applicant's foreign relatives have connections to the Colombian government, criminal, or paramilitary organizations.<sup>16</sup> Regarding Applicant's relationship with her two half-sisters, the record does not contain information suggesting that these ties are close. The only information regarding the frequency of Applicant's contacts with them is that she has in-person contact with them every couple of years. Applicant's last trip to Colombia occurred four years ago. While it is difficult to label sibling relationships as casual, the record supports a finding that her contact with them is infrequent.<sup>17</sup>

Based on the record, it is unlikely that Applicant will be put in a position of having to choose between the interests of her relatives in Colombia and those of the United States. Applicant immigrated to the United States 17 years ago. She is firmly rooted in the United States by the presence of her husband, her U.S.-born child, her mother, and parents-in-law. She is also a long-term homeowner. Applicant's U.S. ties are stronger than those she may have to her Colombian relatives. Viewed in totality, these factors lead me to the conclusion that Applicant can be expected to resolve any conflict of interest in favor of the United States. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept as described in AG ¶ 2(a). Applicant does not have divided loyalties between the United States and Colombia. Based on the evidence, I conclude that Applicant has mitigated the foreign influence and foreign preference concerns.

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<sup>13</sup> AG ¶ 7(a).

<sup>14</sup> AG ¶ 7(b).

<sup>15</sup> AG ¶ 8(b).

<sup>16</sup> AG ¶ 8(a).

<sup>17</sup> AG ¶ 8(c).

## **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, Foreign Preference:	FOR APPLICANT
Subparagraphs 1.a:	For Applicant
Paragraph 2, Foreign Influence	FOR APPLICANT
Subparagraphs 2.a – 2.d:	For Applicant
Subparagraph 2.e	Withdrawn

## **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Nichole L. Noel  
Administrative Judge