



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



In the matter of:)
)
) ISCR Case No. 14-04782
)
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

05/23/2016

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the foreign influence security concern posed by his mother, a citizen and resident of Nigeria. Clearance is granted.

Statement of the Case

On July 24, 2015, 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 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).

Applicant answered the SOR on August 5, 2015, admitting the allegation and requesting a hearing, whereupon the case was assigned to me on December 1, 2015. On February 4, 2016, a notice of hearing was issued scheduling the case for February 17, 2016. The hearing was conducted as scheduled. I admitted four Government

exhibits marked as Government Exhibits (GE) 1 through 4, and I considered Applicant's testimony. Department Counsel requested that I take administrative notice of facts about Nigeria contained in four documents marked as Hearing Exhibits (HE) I through IV. Applicant did not object, and I granted Department Counsel's request, taking administrative notice of the facts set forth in these documents. The transcript was received on February 25, 2016.

Findings of Fact

Applicant is a 29-year-old single man with two children, ages five and three. A previous marriage ended in divorce several years ago. Since 2004, he has worked for a defense contractor in the cybersecurity field. (Tr. 18)

Applicant, whose mother was a Nigerian immigrant, was born in the United States. When he turned five years old, his mother sent him to Nigeria to live with his father. Applicant spent the next 12 years in Nigeria, finishing high school. When Applicant turned 17, his father died. Applicant then returned to the United States, attending college part-time here, and returning to Nigeria over the summers, to attend college part-time there. (Tr. 32) He attended both the Nigerian college and the U.S. college for six years, beginning in 2004. In 2010, he earned a bachelor's degree in computer science from the Nigerian college. (Tr. 18)

In 1993, Applicant's mother returned to Nigeria. She lives in her home town, a rural village with a population of less than 1,000 people. (Tr. 23) Most of the people in this village are farmers. (Tr. 23) Applicant's mother is the proprietress of a non-profit, primary school. (Tr. 25) Applicant talks to her once or twice per day and sends her approximately \$200 every other month. (Tr. 27-28) Applicant has not returned to Nigeria to visit her since 2011. Applicant has no other relatives living in Nigeria with whom he has a relationship.

Applicant has no property interests in Nigeria. He has approximately \$2,000 in savings deposited in a U.S. bank, and he earns approximately \$82,000 per year. (Tr. 30-31)

Nigeria is a federal republic located in western Africa. The United States considers its relationship with Nigeria to be among the most important in Africa. (HE I at 2) Nigerian diplomats have mediated conflicts throughout Africa. Nigeria ranks among the top five troop contributors to United Nations (U.N.) peacekeeping missions. (HE I at 3)

Although Nigeria's most recent election in 2011 was generally credible and orderly, its commitment to the rule of law remains a work in progress. (HE I at 6) Corruption at all levels of government is pervasive. (HE I at 8) Boko Haram, an Islamic extremist, terrorist group is fomenting instability in northern Nigeria, attacking predominantly Christian villages, planting car bombs near markets and government facilities, and abducting young women, forcing them into sex slavery. (HE II at 4) In

parts of the predominantly Muslim north, Boko Haram operates with impunity, as Nigeria's central government lacks the resources to adequately confront them. The central government's inability to overcome this problem has led to vigilantism, as Christians groups have retaliated against Muslims suspected of collaborating with Boko Haram. There is evidence that Boko Haram is seeking to internationalize its terrorism, as it has reached out to other Islamic extremist groups worldwide. Applicant's mother's village is in south west Nigeria, a predominantly Christian part of the country, more than 500 miles away from the region that has been plagued by terrorism. (Tr. 26)

Nigeria is participating in several multilateral counterterrorism efforts on the military front, as well as the diplomatic and economic front, as it has sought to explore ways to provide more economic and educational opportunities to the area where Boko Haram thrives, which is among the country's poorest. (HE II at 6) Nigeria is one of six countries participating in President Obama's Security Governance Initiative focusing on management, oversight, and accountability of the security sector at the institutional level. (HE II at 3)

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 must be considered 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, these guidelines are applied 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, or mitigate facts admitted by applicant or proven by department counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

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 the 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.

Analysis

Guideline B, Foreign Influence

The security concern under this guideline is set forth, as follows:

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. (AG ¶ 6)

Nigeria is a U.S. ally. It is actively involved in the international community, contributing more troops to U.N. peacekeeping operations than nearly every country in the world. Nigeria is also a leader among West African nations, mediating conflicts and participating in multilateral counterterrorism efforts. Conversely, Nigeria is plagued by terrorism and ethnic conflict, much of which is generated by religious extremism and grinding poverty. Moreover, there is increasing evidence that Boko Haram, its most threatening terrorist organization, is seeking to export its terrorism by building ties with other Islamic extremist groups. As a developing country, Nigeria lacks the resources to enforce the rule of law in areas marred by terrorism and instability.

There is no record evidence that Nigeria is conducting espionage against the United States. Although friendly countries can conduct espionage against the United States as readily as hostile ones, it is unlikely that Nigeria, as a developing country

dependent upon the United States for aid and foreign investment, would jeopardize this relationship by initiating an espionage program targeting the United States. Nevertheless, Nigeria's endemic problem with terrorism triggers the application of AG ¶ 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."

The most dangerous, unstable area of Nigeria is in the north. Applicant's mother lives in the southwest, a relatively stable part of Nigeria, more than 500 miles away from where Boko Haram foments instability. Although Nigeria's government is flawed and its ability to adequately enforce the rule of law in its northern, predominantly Muslim area is limited by lack of resources, the Nigerian government is neither complicit in promoting terrorism, nor lukewarm in its commitment to fighting terrorism, as it actively cooperates with the United States and the international community on counterterrorism issues. Under these circumstances, the heightened risk of exploitation, inducement, manipulation, pressure, or coercion generated by Applicant's mother's Nigerian citizenship and residence is mitigated by AG ¶ 8(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 United States." I conclude that Applicant has mitigated the security concern.

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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Subparagraph 1.a:	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.

MARC E. CURRY
Administrative Judge