

DATE: September 20, 2007

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In Re: )  
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 ----- ) ISCR Case No. 07-00999  
 SSN: ----- )  
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 Applicant for Security Clearance )  
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**DECISION OF ADMINISTRATIVE JUDGE  
DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer Goldstein, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant's foreign ties, which include her mother and four sisters who are citizens and residents of Nigeria, one of which is currently living in Ghana, pose no security risk. Clearance is granted.

**STATEMENT OF THE CASE**

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On May 10, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on May 26, 2007, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 16, 2007. A notice of hearing was issued on August 3, 2007, scheduling the hearing for August 27, 2007. At the hearing the Government presented four exhibits. The Applicant presented eleven exhibits and testified on her own behalf. The official transcript (Tr.) was received on September 6, 2007.

### **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 49 years of age and holds a Bachelors of Business Administration in Accounting and is presently pursuing her Master's in Business Administration. She is employed as a Financial Analyst and seeks a security clearance in connection with her employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Port Harcourt, Nigeria. She grew up there until she was eighteen. In 1980, after a year in Lagos, and with encouragement and financial support from her parents, she came to the United States under a student visa where she attended college and obtained her accounting degree. (Applicant's Exhibit G). Her husband is deceased, and she has twin boys who were born in the United States. (Applicant's Exhibit I and H). The Applicant decided to become a United States citizen in February 2005, because of her native born American twin boys. (Applicant's Exhibit C). After becoming a United States citizen, the Applicant did not travel to Nigeria, allowed her Nigerian passport to expire and did not renew it, renounced her Nigerian citizenship by letter and surrendered her Nigerian passport to the Consulate. (See Applicant's Exhibit B).

Of her seven siblings, the Applicant has a brother who is a medical doctor and who is a citizen of and resides in the United States. She has two brothers who are permanent residents of the United States, residing here. They both intend to become citizens of the United States and permanently reside here. Of her four sisters, three are citizens of and reside in Nigeria. The other temporarily lives in Ghana. The sister in Ghana is a pastor. She and her husband are doing missionary work that requires them to travel and they are only in Ghana temporarily. The Applicant knows that one of her sisters is a salesperson and she has little or no contact with the other two.

The Applicant's mother is 73 years old, a retired school principal, and a permanent resident of the United States who is trying to obtain her United States citizenship in order to permanently

relocate here. The Applicant's father is deceased. Her retirement is not much so all of the siblings support her. The Applicant sends her mother about \$500.00 a year at the most. The Applicant's mother currently travels between the United States and Nigeria in order to visit her children. She stays with the Applicant sometimes as long as six months at a time. The Applicant's husband's family all resides in the United States.

The Applicant traveled to Nigeria in 1999 for three weeks to bury her husband, who was a prince, the son of the Chief of the village. She returned to Nigeria in 2000 to have closure of her husband's death. She also traveled to Nigeria twice in 2003 and once in 2004.

The Applicant has no assets in Nigeria and does not stand to inherit anything. None of her family is associated in any way with the Nigerian government.

I have taken administrative notice of the current political conditions in Nigeria. The fact that Nigeria is a federal republic composed of 36 states, which has a very poor human rights record. Human rights violations include police brutality, armed robberies and murders to name a few. I have considered the fact that Nigerian Government officials at all levels commit serious abuses. The fact that Nigeria has terrorists activities, presents potential danger to Americans who travel there, and is rampant with crime and instability. The overall deteriorating security situation in Nigeria, the human rights abuses and the government corruption elevates the cause for concern in the case.

I have also taken administrative notice of the current political conditions in Ghana. Its human rights record is better than Nigeria's however, there still exists government corruption, including excessive use of force by police, vigilante justice, police corruption and impunity, arbitrary arrest and detention, and prolonged pretrial detention to name a few.

The Applicant has not discussed the fact that she is applying for a security clearance with her mother or her siblings in Nigeria.

#### Mitigation.

Applicant's 90 day performance review reflects "outstanding ratings" or "consistently meets standards" in every category. (See Applicant's Exhibit D).

A letter from the Applicant's supervisor indicates that the Applicant is "an invaluable program asset and she is ready to assume greater responsibilities withing the program and company". (See Applicant's Exhibit E).

A letter from her pastor indicates that the Applicant is a person of integrity and honesty. She is well known in the church community and is supportive of the church activities and their mission. She is a member of St. John's Episcopal Church and her sons attended the church school through 2005. (See Applicant's Exhibit F).

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### **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Influence

6. The Concern. 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 country 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.

#### 7. Condition that could raise a security concern:

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(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.

#### 8. Conditions that could mitigate security concerns:

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 U.S.;

8(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances

- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
  
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates that his foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere

possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on her suitability for access to classified information.

The Applicant was born in Nigeria and immigrated to the United States, where she has lived for the past twenty-seven years. She became a naturalized United States citizen in February 2005 and renounced her Nigerian citizenship and surrendered her Nigerian passport. She has twin sons who are native born American citizens that have impacted her decision to make the United States her permanent home. With respect to Guideline B, the overall deteriorating security situation in Nigeria, the human rights abuses and the government corruption in Nigeria certainly elevates the cause for concern in the case. However, under the particular facts of this case, the evidence establishes that the Applicant is not vulnerable to foreign influence. The only regular contact the Applicant has with anyone in Nigeria is with her mother who travels between Nigeria and the United States to visit her children on a fairly frequent basis. Her mother is a permanent resident of the United States and she is trying to obtain her citizenship in order to permanently relocate here.

I have also considered the "whole person concept" in evaluating whether the Applicant meets the qualifications for access to classified information. The Applicant's qualities, characteristics and circumstances have been considered. The Applicant came to the United States at the age of eighteen and has made it her permanent home. She was the first in her family to make the United States her permanent home. Since immigrating to the United States, the Applicant has been a productive member of society. She has obtained her Bachelor's degree and is currently working on her Master's degree. She has established a professional career employed for a defense contractor and has demonstrated that she is an invaluable asset to the program. She has excelled in accomplishing the American dream. She has demonstrated her loyalty and commitment to the United States. She has expressed strong positive feelings toward the United States and is grateful for the opportunities that she has found both through her ability to obtain higher education and in her professional development. She is well respected by his superiors and professional colleagues. The Applicant is a credible, intelligent, and forthright individual. Most importantly, she understands her responsibilities to the United States when holding a security clearance and will never under any circumstances improperly divulge classified information. The current political conditions in Nigeria, although horrible, do not adversely effected the Applicant's eligibility for access to classified information.

Under Guideline B, Disqualifying Condition 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 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 applies. However, Mitigating Conditions 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 U.S. and 8(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation are applicable. The Applicant has three brothers who are citizens and residents of the United States and a mother who is in the process of obtaining her United States citizenship in order to relocate here. The Applicant has little or no contact with her four sisters who remain in Nigeria or Ghana.*

Arguably, the Applicant's mother who was at one time a school principal, could be said to have worked for the Nigerian Government, as the school was a public school available to all Nigerian citizens. She is now retired and has been for many years. Her small pension from the Nigerian Government provides little in the way of financial support. The Applicant and her siblings send money to their mother to help support her. However, given the number of siblings involved, the Applicant sends only as much as \$500.00 a year. The Applicant's mother is no longer associated with the Nigerian government, or is she in a position to place foreign influence on the Applicant, or in a position to be exploited by the Nigerian Government in a way that could force the Applicant to choose between loyalty to her and loyalty to the United States. The Applicant has for the most part cut all ties with Nigeria. The Applicant understands her responsibility to the United States in holding a security clearance. Based on the foregoing, the Applicant's relatives in Nigeria do not raise a security concern and Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has met her ultimate burden of persuasion under Guideline B.

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### **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas.      1.a.: For the Applicant  
                         1.b.: For the Applicant  
                         1.c.: For the Applicant

### **DECISION**

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

Darlene Lokey Anderson  
Administrative Judge