



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



In the matter of:)
)
) ISCR Case No. 17-04278
)
)
Applicant for Security Clearance)

Appearances

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

02/28/2019

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the foreign influence security concerns arising from his connections to family members in Nigeria. National security eligibility for access to classified information is denied.

History of Case

On June 2, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On January 30, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). On February 12, 2018, Applicant answered the SOR in writing and requested a hearing (Answer). The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on October 4, 2018. DOHA issued a Notice of Hearing on October 9, 2018, setting the hearing for November 5, 2018. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified and called one witness. He did not offer any exhibits. The Government's exhibits were admitted without objection. The record

closed at the conclusion of the hearing. DOHA received the hearing transcript (Tr.) on November 13, 2018.

Procedural Ruling

I take administrative notice of facts concerning Nigeria. Those facts are set out in the Government's Request for Administrative Notice for the Federal Republic of Nigeria (GE 4). The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The pertinent facts are set out in the Findings of Fact, below.

Findings of Fact

Applicant admitted the four allegations contained in the SOR. His admissions are incorporated into the findings of fact below.

Applicant is 33 years old and unmarried. He was born in Nigeria. He attended college in Nigeria, but did not complete a degree. In September 2008, at the age of 23, he immigrated to the United States on a lottery visa. Upon his arrival, he lived with a friend for two years. From August 2009 to May 2013, he attended college and earned a bachelor's degree. He was unemployed for a period of time while he attended college. He became a naturalized U.S. citizen in September 2014. He worked for a security company prior to obtaining a position with a defense company in 2015. He began graduate school in 2018. (Tr. 21-25; GE 2)

Applicant visited Nigeria in 2013 to attend his brother's wedding and see his family. He returned to Nigeria in April 2016 to see his parents, who were ill. In December 2016, he went back to Nigeria because his father was not doing well and he thought his father might die. Both parents recovered. They are citizens and residents of Nigeria. (Tr. 25-26)

Applicant's mother retired from a government position. She was a secret service officer. She also has owned a small convenience store for many years. Applicant and his brothers worked in the store while they were growing up. Applicant's father is retired. He worked as a quarry manager. He also did commercial driving. (Tr. 27-30; GE 2) In April 2017, Applicant was interviewed by a government investigator as part of a background investigation. Applicant stated that he texted his father every three weeks and his mother every two weeks. (GE 3).

Applicant has four brothers. All of them are citizens of Nigeria; three of them are also residents of Nigeria. One brother worked for the Nigerian government's security services. He provided escort security for a president of Nigeria. Applicant said that brother left that position about two years ago and now owns a business. Another brother works for a university doing administrative work and another brother owns an entertainment center. His fourth brother is a resident of Canada since 2002. He works for an insurance company located there. (Tr. 30-35; Answer)

During the April 2017 background interview, Applicant stated that he contacts his brother residing in Canada once every two weeks through text messages. He contacts one brother in Nigeria once a month by text. He contacts his other two brothers in Nigeria by phone and text messages once every three weeks. (GE 3) Applicant testified that he speaks to his family once or twice a month, but he never talks about his work and does not ask about their work. (Tr. 33)

Since 2010, Applicant has given his parents about \$500 for medical expenses. The last time was two years ago. He said his brothers help his parents financially. (Tr. 36, 39-40, 48)

Applicant said most of the terrorist problems in Nigeria occur in the northern part of the country. He said his family lives in the western area, which is between 300 and 500 miles away. He has never been to northern Nigeria. (Tr. 37-40)

Applicant owns a car and has a U.S. checking account and credit card. He does not have any financial interests in Nigeria. He does not have any relatives in the United States. He is active in his church. (Tr. 44-46)

Applicant's facility security officer (FSO) testified. In addition to being the FSO for Applicant's employer, he also works in the human resources department. The FSO has known Applicant since 2015. He said Applicant is a top database specialist and has received high performance ratings, which indicate that he exceeds expectations. (Tr. 50-53)

Nigeria

Nigeria faces many challenges fueled by sectarian, religious, and ethnic violence. Numerous terrorist groups are increasingly active throughout Nigeria. Threats of kidnapping and violence are high, and the Department of State warns U.S. citizens that all travel to Nigeria should be avoided. Of particular significance are the poor human rights record; the active and hostile presence of Boko Haram and ISIS; and other insurgent and extremist groups that generate instability and openly attack police, security and military forces, the local populace, and U.S. citizens and interests.

Policies

This national security eligibility action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD after June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief

introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant 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." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline B: Foreign Influence

The security concern relating to the guideline for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline describes conditions that could raise security concerns and may be disqualifying under AG ¶ 7. Two are potentially applicable in this case:

(a) contact, regardless of method, 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;¹ and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

Nigeria has significant internal anti-western terrorism threats that operate openly and contrary to U.S. interests. Accordingly, Applicant's close connections and visits to his family there generate significantly heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a).

Applicant has ongoing contacts with his parents and three brothers, who are citizens and residents of Nigeria. He visited his family in 2013 and twice in 2016. He has

¹ The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, that factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

provided some financial support to his parents. These relationships create a heightened risk of foreign pressure or attempted exploitation because terrorists and insurgents in Nigeria seek intelligence and engage in behaviors that are hostile to the United States' interests. Applicant's relationship with family members creates a potential conflict of interest between Applicant's obligation to protect sensitive information or technology and his desire to help family members living in Nigeria. The evidence is sufficient to raise a disqualification under AG ¶ 7(b).

After the Government produced sufficient evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying security concerns based on these facts:

(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;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(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.

Considered in light of the substantial anti-western insurgent and terrorism threats in Nigeria, Applicant did not sufficiently demonstrate that it is unlikely he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States due to his family ties in Nigeria. He has legitimate and appropriately close relationships with family members living in Nigeria, and a strong interest in protecting those people. His communication and contact with them are neither casual nor infrequent. Accordingly, he failed to establish the mitigating conditions set out in AG ¶¶ 8(a) and (c).

The evidence also fails to establish sufficient mitigation under AG ¶ 8(b). A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the United States." Applicant has minimal connections to the United States: he arrived in the United States in 2008; he earned a bachelor's degree in 2009; he became a citizen in September 2014, less than five years ago; and he started working for a defense contractor in 2015. These connections do not outweigh his history and familial relationships with Nigeria. There is insufficient evidence to conclude that Applicant's U.S.

ties are so deep and longstanding that he can be expected to resolve any conflict of interests involving his family in Nigeria in favor of the U.S. interests. Accordingly, he did not mitigate the foreign influence security concerns under this condition.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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(d):

- (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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline B and in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The foreign influence security concerns do not arise from any questionable conduct by Applicant, but rather circumstances that are normal results of his family situation. There is no evidence that he has ever taken any action that could cause potential harm to the United States. However, after weighing the disqualifying and mitigating conditions, and all pertinent facts and circumstances in the context of the whole-person, I conclude Applicant failed to mitigate the security concerns pertaining to foreign influence. The significant potential for pressure, coercion, exploitation, or duress remains unmitigated. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:

AGAINST APPLICANT

Subparagraphs 1.a through 1.d: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. National security eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge