



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



In the matter of:

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ISCR Case No. 19-00392

Applicant for Security Clearance

Appearances

For Government: Jeff Kent, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

01/22/2020

Decision

HARVEY, Mark, Administrative Judge:

Applicant has much greater connections to the United States than to Nigeria. He has not used his Nigerian passport since August 2016, and he offered to renounce his Nigerian citizenship. He paid his delinquent debts. Guidelines B (foreign influence), C (foreign preference), and F (financial considerations) security concerns are mitigated. Applicant engaged in domestic violence involving his spouse in 2004, 2007, and 2019. He is on probation. Personal conduct security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On November 3, 2017, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On June 10, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines B, C, F, and E. (HE 2) On July 11, 2019, Applicant responded to the SOR and requested a hearing. (HE 3) On October 17, 2019, the Defense Office of Hearings and Appeals (DOHA) issued an SOR adding an additional SOR allegation in ¶ 3.c under Guideline E. (HE 5) In an undated response, Applicant admitted SOR ¶ 3.c. (HE 5)

On November 13, 2019, Department Counsel was ready to proceed. On November 26, 2019, the case was assigned to me. On December 31, 2019, DOHA issued a notice, setting Applicant's hearing for January 8, 2020. (HE 1) Applicant waived his right to 15 days of notice of the date, time, and location of the hearing. (Tr. 11) The hearing was held as scheduled.

During the hearing, Department Counsel offered 9 exhibits; Applicant offered 19 exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Transcript (Tr.) 17, 19-20; GE 1-9; Applicant Exhibit (AE) A-AE S) On January 16, 2020, DOHA received a transcript of the hearing.

Procedural Rulings

Department Counsel offered summaries for administrative notice concerning foreign influence security concerns raised by Applicant's connections to Nigeria. (Tr. 17-18; GE 9) Applicant did not object to me taking administrative notice of those facts concerning Nigeria, and I granted Department Counsel's motion. (Tr. 18; GE 9) The parties agreed that I could also take administrative notice of information from the State Department website pertaining to Nigeria. (Tr. 18-19)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

The first two paragraphs of the Nigeria section of this decision are verbatim from *U.S. Relations With Nigeria, Bilateral Relations Fact Sheet*, Bureau of African Affairs, U.S. Department of State (Dec. 4, 2018), <https://www.state.gov/u-s-relations-with-nigeria/>. The remainder is verbatim (without footnotes and quotation marks) from Department Counsel's Administrative Notice Request. (GE 9)

Department counsel made a motion to withdraw the allegation in SOR ¶ 2.e (Applicant voted in a Nigerian election in about 1996). (Tr. 15) Applicant did not object,

and I granted the motion. (Tr. 15) I drew a line through SOR ¶ 2.e, wrote “withdrawn,” initialed, and dated my change to the SOR. (Tr. 15; HE 2)

Some details in this case were excluded to protect Applicant’s right to privacy. Specific information is available in the cited exhibits.

Findings of Fact

In Applicant’s SOR response, he admitted the SOR allegations in ¶¶ 1.a through 1.c; 2.a through 2.d; partially admitted the allegations in SOR ¶¶ 3.a through 3.c; admitted the allegation in SOR ¶ 4.a, and partially admitted the allegation in SOR ¶¶ 4.b and 4.c. (HE 3; HE 5) He also provided extenuating and mitigating information. (HE 3) His admissions are accepted as findings of fact.

Applicant is a 45-year-old health policy analyst. (Tr. 20-21) He worked for a DOD contractor from October 2018, until recently, when he became unemployed. (AE B at 2) Applicant’s parents were living in the United States when Applicant was born in the United States. (Tr. 21; SOR response at 9; AE A) When Applicant was two years old, he and his family moved from the United States to Nigeria. (SOR response at 9) He attended school through one year of college in Nigeria. (*Id.*) In 1994, he returned to the United States when he was 20 years old. (*Id.*) He served in the U.S. Navy from 1998 to 2006. (Tr. 22; SOR response at 9) He received an honorable discharge as a petty officer third class. (*Id.*; AE A) During his Navy service, he received the following awards: Navy and Marine Corps Achievement Medal; Meritorious Unit Commendation (2); National Defense Service Medal; Navy Good Conduct Medal (2); and Global War on Terrorism Service Medal. (AE C)

After leaving the Navy, Applicant worked for the federal government for almost 11 years (2007 to 2017) in the field of health care. (AE A; AE B at 3-5) At the time he left federal civil service employment, he was a GS 14 Public Health Analyst. (AE B at 3) In 2003, he received a bachelor’s degree in healthcare services, and in 2006, he received a dual master’s degree in healthcare administration and business administration. (Tr. 30, 63-64; AE B at 1) He is working towards a Ph.D. in healthcare services. (Tr. 48; AE B at 1)

Applicant married in 2003. (GE 1) Applicant met his spouse when they were both on active duty in the Navy. (GE 6 at 9) Applicant and his spouse each had one child from another relationship. (Tr. 62; GE 1)

Foreign Influence and Foreign Preference

Applicant’s father is deceased. (GE 1) His mother is a citizen of Nigeria. (SOR response to ¶ 1.a) She was born in Nigeria. (GE 1) In 2008, Applicant’s mother became a permanent resident of the United States. (Tr. 23; AE M) She resides in the United States in Applicant’s residence. (Tr. 22; GE 1; GE 3 at 4) She usually travels to Nigeria on an annual basis and stays there for several months. (Tr. 65)

Applicant's two brothers and one sister are citizens and residents of Nigeria. (SOR response to ¶¶ 1.b and 1.c) At the time of his June 5, 2018 Office of Personnel Management (OPM) personal subject interview (PSI), Applicant said "no employment" for his brothers living in Nigeria, ages 57 and 59, and his sister, age 53. (GE 3 at 3-5) He did not know their addresses. (GE 3 at 4-5) He had weekly to monthly contact with his brothers and daily contact with his sister by telephone or text message. (Tr. 24, 26; SOR response at 3; GE 3 at 3-4) His communications with them were "casual," and they did not discuss significant matters. (SOR response at 3) He does not discuss his work with his family. (SOR response at 5) He did not know about his siblings' employment. (Tr. 38-39) He said that none of his siblings had any "affiliation with a foreign government." (Tr. 61; SOR response at 2; GE 3 at 5) His sister is not married. (Tr. 62)

Applicant made inconsistent statements about how he used his Nigerian passport. In September 2011, Applicant was issued a Nigerian passport; however, he said he did not use it. (GE 3 at 2) In August 2016, he was issued a Nigerian passport. (GE 3 at 2) He was issued the Nigerian passport to enable him to visit Nigeria without obtaining a Nigerian visa. (Tr. 28, 43; GE 3 at 2-3) At his hearing, he said he presented his Nigerian and United States passports when he went to Nigeria and his U.S. passport when he entered the United States. (Tr. 42-44)

The SOR alleges that Applicant used his Nigerian passport in lieu of his United States passport to exit and enter the United States in about December 2011, May 2015, and August 2016. (SOR response to ¶¶ 2.a, 2.b, and 2.c) It also alleges that he intends to continue using his Nigerian passport in lieu of his United States passport to exit and enter the United States so long as it is authorized under security rules. (SOR answer to ¶ 2.d at 4; GE 3 at 2) Applicant said he used his Nigerian passport in 2011, 2015, and 2016; however, he did not initially explain how he used it. (Tr. 26-27)

Applicant visited Nigeria as follows: from December 2011, to January 2012; from May 2015, to June 2015; and from August 2016 to September 2016. (GE 1) In 2013, Applicant sent about \$25,000 withdrawn from his retirement fund to his father to help his father pay for home repairs. (Tr. 40-42; GE 3 at 7) In July 2016, he paid \$14,000 for his father's funeral. (Tr. 41; GE 3 at 7) He has not traveled to Nigeria after 2016. (Tr. 24, 60-61)

Applicant's spouse was born in Panama, and she is a U.S. citizen. (GE 1) Both of her parents are U.S. citizens, and her father was serving in Panama with the U.S. Army when she was born. (GE 1) Applicant votes in U.S. elections. (AE L; SOR response at 4) Applicant's child was born in the United States and resides in the United States. (GE 1) Applicant has been a resident of the United States for 25 years. (SOR response at 4) Applicant denied that he has any preference for Nigeria. (SOR response at 4) Applicant is willing to renounce his Nigerian citizenship if security officials request that he do so. (Tr. 28, 37; SOR response at 5)

Personal Conduct

In about April 2004, Applicant's spouse obtained a domestic violence restraining order against Applicant. (SOR response to ¶ 3.b; GE 7) He was not convicted of any offense as a result of the April 2004 altercation with his spouse. (SOR response at 6) Applicant was unable to remember or unwilling to disclose details of the April 2004 altercation with his spouse at his hearing. (Tr. 31, 54)

In June 2007, Applicant and his spouse had another physical altercation. She was a petty officer first class, and Applicant and his spouse were living on base in government housing overseas. (GE 6 at 9) They were in bed, and she was insulting him. (GE 6 at 9) Applicant described the physical altercation to the Naval Criminal Investigative Service (NCIS) as follows:

At some point, [she] started to try to push me out of the bed with her leg. She was lying on her side as she was trying to push me out of the bed. She was not able to get me out of the bed, but she kept on saying things to me to hurt me, belittle me, and make me mad. [She] was lying face down on her stomach, and I got on top of her to hold her down by lying on her with my body. I was trying to stop her from continuing to say things to me so I grabbed her with my hands by her face and head. I kept telling her to shut up. [She] was struggling the whole time. I did not twist or turn [her] by her head. I am sure she got the mark on her face when I was holding her by the head, but I do not know how she got the other marks, shown [in the photos]. . . . I knew she was going to call security, so I unplugged the phone from the wall. (GE 6 at 9-10)

Applicant admitted that he laid on top of his spouse and grabbed her face hard enough to leave marks on her skin. (See SOR response to ¶ 3.a at 5 (admitting to mutual physical contacts and unhealthy marital conflicts) The NCIS report of investigation indicates Applicant and his spouse engaged in a physical altercation, and they both sustained bruises. (GE 6) Applicant admitting pinning his spouse to the bed and grabbing her by the face and head. She had "bruises and abrasions to her chest, shoulder, and face." (GE 6 at 2, 5) Applicant had "a small injury" to his neck and thumb. (AE 6 at 2) Applicant's commander ordered him to move out of base housing until further notice. (AE 6 at 5) Applicant told NCIS that there were two prior incidents involving the police, one involving pushing in 2004, and one involving a verbal argument (no physical contact) in 2006. (AE 6 at 5, 11) No adverse inference is drawn from the incident in 2006. He received marital counseling. (SOR response at 5-6) He was not convicted of a crime. (SOR response at 5; GE 6) Applicant was unable to remember or unwilling to disclose details of the June 2007 altercation with his spouse at his hearing. (Tr. 30, 54)

On July 2, 2019, Applicant responded to the domestic violence allegations in the SOR. Applicant said, "[a]fter going to counseling and working together as a team, my wife and I came out strong and closer than ever before. We have found healthy ways to handle conflict, so I can say with utmost confidence that the behaviors from the past will not recur." (Tr. 54-56; SOR response at 6)

In August 2019, Applicant was upset with his spouse because he believed she was having an extramarital affair. (Tr. 32-33) Applicant and his spouse argued for several hours. (Unless another citation is indicated, the information in this paragraph is from a police report, GE 5 at 4, 6-9) They engaged in mutual shoving. (Tr. 67) She took a photo album into the kitchen and began burning photographs. (Tr. 67) His spouse said Applicant pulled her hair, pushed her into the sink, grabbed her crotch, and made negative comments about her crotch. (*Id.* at 4, 6) Applicant said he could have pulled her hair; however, he did not remember pulling her hair. (Tr. 67-68) She responded by calling the police. Applicant admitted the mutual pushing, and that he pushed her away from the stove because she was trying to burn photos of his deceased father. (*Id.* at 4)

The police arrested Applicant for the August 2019 altercation, and Applicant was charged with assault and battery. (*Id.* at 4, 9) Applicant told the magistrate “he pushed her by the stove, and also that he may have pulled her hair.” (*Id.* at 4) The disposition information relating to Applicant’s assault and battery charge is not part of the record. Applicant said he did not understand whether the court proceeding included a plea of guilty. (Tr. 57, 64) On December 2, 2019, Applicant paid \$450 to enable him to begin a court-ordered 18-week domestic violence course. (Tr. 33-34, 57-58; AE K) Applicant said he started the course. (Tr. 34) Applicant said he will be on probation until October 2020. (Tr. 58) He might be able to have the charges dismissed. (Tr. 66)

Financial Considerations

Applicant is currently unemployed, and he was unemployed from July 2017, to January 2018, and from June 2006, to August 2007. (Tr. 28, 44-45; GE 1; GE 2 at 3) Applicant said he was unable to pay some of his debts because of unemployment. (Tr. 35-36) He has a 70 percent disability rating from the Department of Veterans Affairs. (Tr. 29) The SOR alleges three delinquent debts totaling \$34,013 as follows:

SOR ¶ 4.a alleges Applicant has a charged-off credit-card debt for \$20,140. Applicant’s June 27, 2019 Equifax credit report indicates this debt was \$5,879 past due, and was reported delinquent in May 2017. (AE D at 21) On November 15, 2019, the creditor wrote the debt was settled for \$12,175, and the debt is resolved. (Tr. 34, 64-65; AE J) Applicant’s January 6, 2020 TransUnion credit report reflects a zero balance, “Account paid in Full; was a Charge-off,” and “SETTLED-LESS THAN FULL.” (AE R at 2)

SOR ¶ 4.b alleges Applicant has a store debt placed for collection for \$9,878. Applicant’s June 27, 2019 Equifax credit report indicates the debt was in collections until May 2019 when a \$4,270 payment was due as a balloon payment. (AE D at 9-10) In June 2019, the creditor sent Applicant a bill for \$4,270. (AE G) Applicant’s January 6, 2020 TransUnion credit report reflects a zero balance, “Account Paid in Full; was a Collection,” and “SETTLED LESS THAN FULL.” (Tr. 34-35, 64-65; AE R at 3)

SOR ¶ 4.c alleges Applicant has a delinquent vehicle debt for \$3,995. Applicant’s June 27, 2019 Equifax credit report indicates the debt was \$3,769 past due, and was charged-off in the amount of \$16,026. (AE D at 50) The debt became delinquent in September 2017. (AE D at 50) Applicant’s January 6, 2020 TransUnion credit report

reflects a zero balance, "Account paid in Full; was a Charge-off," and "SETTLED-LESS THAN FULL." (Tr. 35, 64-65; AE R at 6-7)

In addition to the SOR alleged debts, Applicant paid a charged-off credit-card debt for \$6,747 for less than the full amount in April 2019. (AE D at 24-25) He had multiple accounts in "pays as agreed status," including a mortgage for about \$696,000. (AE D at 33-35) In July 2019, Applicant received financial counseling and generated a budget. (Tr. 36; AE E; AE S) His budget indicated his net monthly income is \$4,500; his monthly expenses total \$4,256; monthly debt payments are \$525; and his monthly remainder is \$219. (AE E at 3-4; AE S at 3-4) According to his budget, his spouse pays part of the mortgage. (AE E at 3-4; AE S at 3-4) Applicant said he withdrew \$50,000 from his Thrift Savings Plan account and used the funds to pay all of his delinquent debts. (Tr. 44-45, 63) Applicant has filed all of his state and federal tax returns for the previous five years.

Character Evidence

In 2019, Applicant received an excellent annual performance evaluation. (AE P) A co-worker who has known Applicant for nine months, a co-worker and friend who has known him for two years, a friend who has known him for 10 years, a friend and co-worker who has known him for more than three years, and a major who has known him for a year provided letters supporting Applicant's access to classified information. (AE I; AE Q) The general sense of their letters is that Applicant is trustworthy, professional, diligent, highly motivated, an exceptional leader, helpful, intelligent, and innovative. (AE I; AE Q) Applicant provides important contributions to mission accomplishment. The letters did not indicate his character references were aware of the contents of the SOR.

Nigeria

Nigeria is the largest economy and most populous country in Africa with an estimated population of more than 190 million, which is expected to grow to 400 million by 2050 and become the third most populous country in the world after China and India. Nigeria had an estimated gross domestic product of 375 billion USD in 2018. Although Nigeria's economy has become more diversified, crude oil sales have continued to be the main source of export earnings and government revenues. Despite persistent structural weaknesses such as a deficient transportation infrastructure, the Nigerian economy grew briskly for the decade ending in 2013. The growth rate slowed in 2014, owing in large part to the fall in oil prices, and in 2016 and 2017 Nigeria experienced its first recession in over two decades before rebounding in 2018. The gains from economic growth have been uneven; more than 60% of the population lives in poverty.

The United States is the largest foreign investor in Nigeria, with U.S. foreign direct investment concentrated largely in the petroleum/mining and wholesale trade sectors. At \$2.2 billion in 2017, Nigeria is the second largest U.S. export destination in Sub-Saharan Africa. The United States and Nigeria have a bilateral trade and investment framework agreement. In 2017, the two-way trade in goods between the United States and Nigeria totaled over \$9 billion. . . . Nigeria and the United States belong to a number of the same international organizations, including the United Nations, International Monetary Fund,

World Bank, and World Trade Organization. Nigeria also is an observer to the Organization of American States.

Nigeria is a federal republic composed of 36 states and the Federal Capital Territory. In 2015, President Muhammadu Buhari of the All Progressives Congress party was elected to a four-year term in the first successful democratic transfer of power from a sitting president in the country's history. In February 2019, he was re-elected for a second term. Notwithstanding important steps forward on consolidating democracy, Nigeria continues to face the formidable challenges of terrorist attacks, inter-communal conflicts, crime, kidnapping, and public mistrust of the government.

The U.S. Department of State travel advisory for Nigeria is Level 3: Reconsider Travel due to **crime, terrorism, civil unrest, kidnapping, and maritime crimes**; and Level 4: Do Not Travel to Borno and Yobe States and Northern Adamawa State due to **terrorism**. (emphasis in original) The U.S. Embassy has limited ability to provide emergency services to U.S. citizens beyond Abuja and Lagos and their immediate surrounding areas. U.S. Government employees are subject to movement constraints as security conditions warrant. Both Abuja and Lagos are assessed by the Department of State as being high-threat locations for terrorist activity directed at or affecting official U.S. Government interests. U.S. Government personnel are currently prohibited from traveling to Borno due to terrorist threats against United States and European citizens located in Borno.

Boko Haram, and ISIS-West Africa, both of which are designated Foreign Terrorist Organizations, are active in Nigeria. Boko Haram seeks to replace the Nigerian government with an Islamic state, establish an Islamic caliphate across Africa, avenge military offenses against the group, and destroy any political or social activity associated with Western society. It conducts attacks primarily on civilian and regional military targets. ISIS-West Africa also seek to implement its strict interpretation of Sharia and replace the Nigerian government with an Islamic state.

Boko Haram and ISIS-West Africa continued to conduct attacks against government and security forces in the northeast, which resulted in deaths, injuries, abductions, and the capture and destruction of property. Boko Haram attacks did not appear to discriminate between civilians and government officials, whereas ISIS-West Africa tended to generally focus on government and security forces, while trying to cultivate stronger ties with local communities, including by providing limited social services. The Nigerian military has expanded its presence in parts of northeastern Nigeria, but the northeast remains an active zone of combat, as Boko Haram and ISIS-West Africa insurgents continue to carry out attacks.

While Boko Haram no longer controls as much territory as it once did, the two insurgencies nevertheless maintain the ability to stage forces in rural areas and launch attacks against civilian and military targets across the northeast. Boko Haram continued to employ indiscriminate suicide bombings targeting the local civilian populations. ISIS-West Africa targeted civilians with attacks and kidnappings less frequently than Boko Haram, but employed targeted acts of violence and intimidation against civilians in order

to expand its area of influence and gain control over critical economic resources. As part of a violent and deliberate campaign, ISIS-West Africa also targeted government figures, traditional leaders, and contractors. Both groups have carried out more than 600 to 700 attacks in Nigeria using small arms, captured military equipment, suicide bombers, improvised explosive devices (IEDs), vehicle-borne (VB) IEDs, ambushes, and kidnappings.

In 2018, Boko Haram recruited and forcefully conscripted child soldiers, and it carried out scores of suicide bombings, many by young women and girls forced into service. The group conducted abductions and subjected many abducted women and girls to sexual and gender-based violence, including forced marriage and rape. The Nigerian government investigated attacks by Boko Haram and ISIS-West Africa and took steps to prosecute their members, although the majority of suspected insurgent group supporters were held in military custody without charge.

Other human rights issues reported in Nigeria during 2018 included unlawful and arbitrary killings, forced disappearances, and torture by both government and non-state actors; prolonged arbitrary detention in life-threatening conditions, particularly in government detention facilities; harsh and life-threatening civilian detentions in military facilities, often based on flimsy or no evidence; and infringement on citizens' privacy rights. The government took steps to investigate alleged abuses but fewer steps to prosecute officials who committed violations. Impunity remained widespread at all levels of government.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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.

AG ¶ 7 has conditions that could raise a security concern and may be disqualifying 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;

(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; and

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Applicant's mother and three siblings are citizens of Nigeria. Applicant's mother lives with Applicant in the United States. Applicant's three siblings are residents of Nigeria. Applicant has frequent contacts with his siblings.

When an allegation under a disqualifying condition is established, "the Directive presumes there is a nexus or rational connection between proven conduct or circumstances . . . and an applicant's security eligibility. Direct or objective evidence of nexus is not required." ISCR Case No. 17-00507 at 2 (App. Bd. June 13, 2018) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

There are widely documented safety issues for residents of Nigeria primarily because of terrorists and criminals. Terrorists have killed hundreds of Nigerians in the last five years. The Nigerian government has made progress against the terrorists in recent years; however, terrorism continues to be a serious problem.

The mere possession of close family ties with relatives living in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if an applicant, his or her spouse, or someone sharing living quarters with them, has such a relationship with even one person living in a foreign country, this 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. 08-02864 at 4-5 (App. Bd. Dec. 29, 2009) (reversing grant of security clearance because of problematic annual visits of applicant's father to Iran and ownership of property in Germany).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, his or her immediate family members, and this presumption includes in-laws. ISCR Case No. 07-06030 at 3 (App. Bd. June 19, 2008); ISCR Case No. 05-00939 at 4 (App. Bd. Oct. 3, 2007) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)).

The DOHA Appeal Board has indicated for Guideline B cases, "the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. The country's human rights record is another important consideration." ISCR Case No. 16-02435 at 3 (May 15, 2018) (citing ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017)). Another important factor is the nature of a nation's government's relationship with the United States. These elements are relevant in assessing the likelihood that an applicant's family members living in that country are vulnerable to government coercion or inducement.

The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence-collection operations against the United States. The terrorism situation in Nigeria places a significant burden of persuasion on Applicant to demonstrate that his relationships with any family member living in or visiting Nigeria does not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and concerns about assisting a relative living in or visiting Nigeria.

The Appeal Board in ISCR Case No. 03-24933, 2005 DOHA LEXIS 346 at *20-*21 n. 18 (App. Bd. 2005), explained how relatives in a foreign country raise a security concern:

The issue under Guideline B is not whether an applicant's immediate family members in a foreign country are of interest to a foreign power based on their prominence or personal situation. Rather, the issue is whether an applicant's ties and contacts with immediate family members in a foreign country raise security concerns because those ties and contacts create a

potential vulnerability that a foreign power could seek to exploit in an effort to get unauthorized access to U.S. classified information that an applicant -- not the applicant's immediate family members -- has by virtue of a security clearance. A person may be vulnerable to influence or pressure exerted on, or through, the person's immediate family members -- regardless of whether the person's family members are prominent or not.

Guideline B security or trustworthiness concerns are 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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the 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. See ISCR Case No. 02-22461, 2005 DOHA LEXIS 1570 at *11-*12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

While there is no evidence that intelligence operatives, criminals, or terrorists from or in Nigeria seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Nigeria has a significant problem with terrorism and crime. Applicant's family in that country "could be a means through which Applicant comes to the attention of those who seek U.S. information or technology and who would attempt to exert coercion upon him." ADP Case No. 14-01655 at 3 (App. Bd. Dec. 9, 2015) (citing ISCR Case No. 14-02950 at 3 (App. Bd. May 14, 2015)).

Applicant's relationships with relatives who are living in Nigeria or visiting that country create a potential conflict of interest because terrorists could place pressure on his family in Nigeria in an effort to cause Applicant to compromise classified information. These relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Department Counsel produced substantial evidence of Applicant's relationships with family in Nigeria and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; 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.

Applicant's mother is a citizen of Nigeria, and she is a lawful permanent resident of the United States. She lives with Applicant in the United States. His siblings are citizens and residents of Nigeria. Applicant assured his siblings have no connection to the Nigerian government. Applicant has frequent contacts with his mother and siblings. Applicant most recently went to Nigeria in 2016 for his father's funeral. AG ¶ 8(a) cannot reasonably apply because of the closeness of his ties to family members with Nigerian citizenship or residency or both.

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has significant connections to the United States. He was born in the United States. He lived in the United States for the last 25 years. He honorably served in the U.S. Navy for eight years, and he was a U.S. Government employee for more than 10 years. He is married to a U.S. citizen who is also a veteran, having served in the U.S. Navy for several years. Applicant and his spouse own a home in the United States, and he has bank accounts and credit cards in the United States. His child is a U.S. citizen and resident of the United States. There is no evidence of ongoing financial connections to Nigeria. Applicant has shown his patriotism, loyalty, and fidelity to the United States during his support to DOD while serving in the Navy and during his federal civilian employment.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with relatives who are citizens and residents of Nigeria or that have significant contacts with residents of Nigeria. Applicant has close relationships with family in that country, and they are at risk from criminals, terrorists, and human rights violations of the Nigeria government.

In sum, Applicant's connections to the United States are much more significant than his and his mother's connections to their relatives living in Nigeria. Applicant "has such deep and longstanding relationships and loyalties in the United States, that [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." AG ¶ 8(b) applies. Foreign influence security concerns are mitigated.

Foreign Preference

AG ¶ 9 explains the security concern about foreign preference stating:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. By itself; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

AG ¶ 10 lists conditions that could raise a security concern and may be disqualifying including, "(c) failure to use a U.S. passport when entering or exiting the U.S." The SOR alleges that Applicant used his Nigerian passport in lieu of his United States passport to exit and enter the United States in about December 2011, May 2015, and August 2016, and he intends to continue using his Nigerian passport in lieu of his United States passport to exit and enter the United States. Applicant admitted the SOR allegations. At his hearing, he said he presented both passports when he entered the United States.

If Applicant solely used his Nigerian passport to enter the United States, he would have needed a U.S. visa. "All travelers entering the United States from all other countries need a passport upon arrival (regardless of their country of citizenship). Permanent residents and foreign nationals may also need a U.S. visa. You must apply for a visa before you start your trip." U.S. Government website, <https://www.usa.gov/enter-us>.

"U.S. citizens don't need a U.S. visa for travel, but when planning travel abroad may need a visa issued by the embassy of the country they wish to visit." See Department of State website, <https://travel.state.gov/content/travel/en/us-visas.html>. Applicant had a U.S. passport and a Nigerian passport. He apparently used his Nigerian passport so that he would not need a visa issued by Nigeria when he visited Nigeria. He did not explain why he would present a Nigerian passport when entering and exiting the United States. Because Applicant admitted the SOR allegations, the government's evidence meets the substantial evidence test, and consideration of mitigating conditions is required.

AG ¶ 11 states conditions that could mitigate security concerns in this case including, “(c) the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests”; and “(e) the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern.”

Assuming Applicant used his Nigerian passport to enter or exit the United States, Applicant said he is willing to renounce his Nigerian citizenship if necessary to alleviate security concerns. He most recently used his Nigerian passport in 2016, and he was unaware that use of his Nigerian passport might cause a security concern. He said he is willing to turn-in his Nigerian passport or not use it to enter or exit the United States to comply with security requirements. His past use of a Nigerian passport under these circumstances does not show a preference for Nigeria. AG ¶ 11(c) applies, and AG ¶ 11(e) partially applies. Foreign preference security concerns are mitigated.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

15. The Concern. Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 includes conditions that could raise a security concern and may be disqualifying include:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: . . . (3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant engaged in physical altercations with his spouse in 2004, 2007, and August 2019. Applicant was charged as a result of the August 2019 altercation with assault and battery, a criminal offense that could have been alleged under Guideline J. The 2007 incident occurred outside the United States and may not have been a criminal offense under foreign law. The facts involved in the 2004 incident are unclear. Notwithstanding, Applicant's pattern of engaging in domestic altercations with his spouse, especially the most recent altercation, show questionable judgment, untrustworthiness, unreliability, and unwillingness to comply with rules. Such conduct adversely affects his professional and community standing.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions fully apply. Applicant's August 2019 altercation with his spouse resulted in his arrest for assault and battery. This altercation occurred after he responded to the SOR and indicated future domestic violence incidents would not occur. He is on probation and has not completed domestic violence counseling. He has not completed the rehabilitation process. Future inappropriate behavior is likely to occur. His behavior continues to cast doubt on his reliability, trustworthiness, and good judgment. None of the mitigating conditions fully apply to Applicant's conduct. Personal conduct security concerns are not mitigated.

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; "(b) unwillingness to satisfy debts regardless of the ability to do so"; and "(c) a history of not meeting financial obligations." The record establishes AG ¶¶ 19(a), 19(b), and 19(c).

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. February 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Applicant was unemployed, which is a circumstance outside of his control that adversely affected his finances. He showed his good faith by resolving all of the SOR debts. His credit reports reflect that he has paid many debts on terms acceptable to his creditors. There is sufficient assurance his financial problems are resolved, under control, and will not recur in the future. Under all the circumstances, he established that financial considerations security concerns are mitigated.

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 the 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.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines B, C, E, and F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 45-year-old health support specialist. He was born in the United States. He lived in Nigeria from age 2 to 20. He served in the U.S. Navy from 1998 to 2006. He received an honorable discharge as a petty officer third class. During his Navy service, he received the following awards: Navy and Marine Corps Achievement Medal; Meritorious Unit Commendation (2); National Defense Service Medal; Navy Good Conduct Medal (2); and Global War on Terrorism Service Medal. After leaving the Navy, Applicant worked for the federal government for almost 11 years (2007 to 2017) in the field of health care. At the time he left federal civil service employment, he was a GS 14 Public Health Analyst. In 2003, he received a bachelor's degree in healthcare services, and in 2006, he received a dual master's degree in healthcare administration and business administration. He is working towards a Ph.D. in healthcare services. Applicant married in 2003. His spouse and child are U.S. citizens.

In 2019, Applicant received an excellent annual performance evaluation. Five co-workers and/or friends provided letters supporting Applicant's access to classified

information. The general sense of their letters is that Applicant is trustworthy, professional, diligent, highly motivated, an exceptional leader, helpful, intelligent, and innovative. Applicant provides important contributions to mission accomplishment. The letters did not indicate his character references were aware of the contents of the SOR.

A Guideline B decision concerning Nigeria must take into consideration the geopolitical situation and dangers in those countries. See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion). Nigeria is a dangerous place because of violence from terrorists and criminals, and the Nigeria government does not respect the full spectrum of human rights. Terrorists continue to threaten the interests of the United States and those who cooperate and assist the United States.

Applicant's Nigerian family has no connection to the Nigerian government or terrorists. See ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009) (reversing grant of security clearance because of connections to Nigerian government). While the government has no obligation to present evidence of such a connection, such evidence has important security implications. *Id.* Applicant has not visited Nigeria since his father's death in 2016. He has strong connections to the United States: 25 years residence in the United States; property in the United States; spouse, child, and mother reside in the United States; Applicant, spouse, and child are U.S. citizens; spouse is not a citizen of Nigeria; eight years of honorable active duty Navy service; and more than 10 years of federal government civilian service.

The three domestic disturbances in 2004, 2007, and 2019 involving Applicant and his spouse provide persuasive evidence that access to classified information is not warranted at this time. Applicant was most recently arrested in August 2019 for assault and battery upon his spouse. He previously promised in his SOR response that such altercations would not recur. He is currently on probation. He has enrolled in, but not completed counseling. His domestic violence incidents constitute "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules," and this conduct raises unresolved questions about his "reliability, trustworthiness and ability to protect classified information." AG ¶ 15.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence, foreign preference, and financial considerations security concerns are mitigated; however, personal conduct security concerns are not mitigated. Eligibility for access to classified information is denied.

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
Subparagraphs 1.a, 1.b, and 1.c:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a, 2.b, 2.c, and 2.d:	For Applicant
Subparagraph 2.e:	Withdrawn
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a, 3.b, and 3.c:	Against Applicant
Paragraph 4, Guideline F:	FOR APPLICANT
Subparagraphs 4.a, 4.b, and 4.c:	For Applicant

Conclusion

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

Mark Harvey
Administrative Judge