



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



In the matter of:)
)
) ISCR Case No. 19-01732
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

05/04/2020

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the financial security concerns arising from her delinquent debts, including past-due taxes. She mitigated personal conduct security concerns about her failure to disclose her various delinquencies on her security clearance application. She mitigated foreign influence security concerns about her family members in Nigeria. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 8, 2017. On July 17, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, Guideline E, personal conduct, and Guideline B, foreign influence. The DOD CAF took this action under Executive Order (Exec. Or.) 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

Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective June 8, 2017.

Applicant answered the SOR on August 5, 2019, and, more completely, on September 25, 2019. She requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on November 27, 2019. On December 16, 2019, DOHA issued a notice scheduling the hearing for January 8, 2020.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1-11. All the government exhibits were admitted without objection. Applicant testified and submitted documents that I marked Applicant's Exhibit (AE) A, and admitted without objection. I held the record open to afford Applicant the opportunity to submit additional documentation. She timely submitted seven documents, which were marked as AE B-H and admitted without objection. The post-hearing documents are described in the Findings of Fact, below. DOHA received the transcript on January 16, 2020. The record closed on January 22, 2020.

Request for Administrative Notice

At Department Counsel's request, I took administrative notice of facts concerning Nigeria. Department Counsel provided supporting documents that verify, detail, and provide context for certain requested facts. They are detailed in the Government's administrative notice filing (AN I) and included in the Findings of Fact.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.f, 3.a, 3.b. and 3.c, with explanations. She denied SOR ¶¶ 1.f and 1.g, also with explanations. She "admitted" SOR ¶¶ 2.a and 2.b, though I construe her explanations as denials. Her admissions and explanations are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 46 years old. She was born in Nigeria. She married her husband in Nigeria in 1997, the year she came to the United States, at age 24. She became a U.S. citizen in 2003. Her husband is also a U.S. citizen. They have three children, ages 14, 12, and 10, all born in the United States. (Tr. 53-57; SCA)

Applicant earned master's degrees in 2012 and 2013. She worked for large defense contractors from 2004 to 2014, with a clearance for those jobs. Since 2014 she has worked for smaller employers in the defense industry, including her own company, which she opened in 2017. She does not hold a clearance currently. (Tr. 40-41, 47, 58-67; SCA) Her husband is a real estate agent. (Tr. 43, 67)

Applicant's mother-in-law came from Nigeria to live with her in about 2009. Her mother-in-law became seriously ill and Applicant cared for her, straining the family

finances. Her mother-in-law (SOR ¶ 3.c) returned to Nigeria at some point, and passed away in 2018. (Tr. 42-43, 54-55; Answer)

Applicant's younger brother and sister, both in their 40s, are citizens and residents of Nigeria. (SOR ¶¶ 3.a, 3.b). They are both pastors in a church. They also manage small shops. Applicant was in Nigeria in December 2019, shortly before the hearing, to bury her mother-in-law. Before then, she was last there in 2017, to bury her father. She went for about two weeks each time. Applicant speaks to her siblings about once a month. (Tr. 54-57, 90-92, 105)

Applicant noted that she held a clearance before and her Nigerian family members were not an issue previously. She recognizes that the presence of Boko Haram in Nigeria raises a security concern but noted that "we have nothing to do with Boko Haram. . . .They are more of the northern Muslim part. We are Christian south." (Tr. 117)

Under Guideline F, the Government alleged that Applicant has incurred eight delinquent debts, totaling about \$81,755. Three of the debts are tax liens. The debts are proven by credit reports in the record (GE 2, 4, 5) and by court documents establishing judgments and liens. (GE 6-11)

SOR ¶ 1.a (\$1,946) is a charged-off credit card with a bank. Applicant documented that the account has been satisfied. (AE C; Tr. 71-73, 93)

SOR ¶¶ 1.e (\$2,694) and 1.f (\$1,719) are judgments issued against Applicant in 2013 and 2017, respectively, for unpaid homeowners' association fees relating to a rental property. (GE 10, GE 11) Applicant provided documentation that both of the judgments were satisfied. (AE E – AE H; Tr. 84-86, 95-100)

SOR ¶ 1.g (\$906) is a debt placed for collection by a cable company. Applicant denied the debt, noting that she has a current account there. (Answer) The debt is listed on her 2017 credit report as being delinquent since 2014. (GE 2 at 8) Applicant testified that she does not recall owing this debt to the company in question. She has service from a different provider now. (Tr. 88, 94-95) She provided no documentation of the status of this debt. This debt is unresolved.

SOR ¶ 1.h is a charged-off debt to a large retailer. No amount is alleged, though the Government alleges that the account remains delinquent. Applicant denied the allegation. (Answer) The Government's evidence shows a zero balance on the account. (GE 2 at 8; Tr. 88-90) This account is resolved.

SOR ¶¶ 1.b (\$803) and 1.c (\$16,624) are state tax liens entered against Applicant in 2016 and 2013, respectively. (GE 7, GE 8) SOR ¶ 1.d (\$57,163) is a federal tax lien issued against Applicant in 2015. (GE 2 at 3)

Applicant owns her home and two rental properties. One of her tenants fell behind on rent when the tenant became hospitalized, in about 2012 or 2013. The tenant also “trashed” the property. Applicant recognized the need to maintain the mortgage since it affected her credit, but fell behind. Applicant is trying to repair the home so she can sell it. That home is vacant, and the other one is occupied. She attested that the mortgage on the occupied home is paid. She said the current renter pays \$2,100 in monthly rent, and she said she makes a profit after taxes, homeowner fees, and other monthly expenses. (Tr. 40-42, 68-71) Applicant attested that she and her husband are financially comfortable and are able to pay their monthly bills. (Tr. 67-68)

Applicant fell behind on her taxes in about 2014 or 2015. (Tr. 51-53) She and her husband jointly file their tax returns on time each year, through an accountant. Their taxes were audited by the Internal Revenue Service (IRS) and authorities requested receipts related to her husband’s real estate business. The paperwork they submitted for the audit was not sufficient. (Tr. 44-45) They hired an accountant to address the audit, but the accountant went out of business. (Tr. 49-50)

Applicant retained a law firm in 2018 to help her address the tax debts, and paid them \$5,000. (AE B) She attested that she was paying the state tax debt every month, as directed by her lawyer. She said she pays about \$150 or \$300 per month towards the state tax debt. (Tr. 73-77, 101-105) Applicant testified that the tax firm told her not to make any payments towards her federal tax debt. (Tr. 77-83, 101) However, she provided no documents to establish the current status of either the state or federal tax debts, or that the tax debts are being paid.

Applicant’s February 2017 SCA included questions asking if, in the past seven years, she had any delinquencies involving enforcement, such as judgments entered against her liens placed against her property for failing to pay taxes or other debts, or had any currently delinquent federal debt. (GE 1 at 37) Applicant answered “No” and thereby failed to disclose her judgments, tax liens (both state and federal) and her federal tax debt, as alleged in the SOR.

The Government alleged that Applicant’s failure to disclose those debts was deliberate. (SOR ¶ 2.a) Applicant answered the allegation by stating, “I admit but when I said NO, I explained that the tax audit was due to my husband[’s] job 1099 and try to explain responding to the question at that time.” (Answer) I interpret this answer as a denial and a reference to her explanations to the interviewing agent. (GE 3)

Applicant’s SCA also included a question asking for disclosure of delinquencies in the past seven years involving “routine accounts” such as charged-off accounts and accounts placed for collection. (GE 1 at 37) Applicant answered “No” and thereby failed to disclose her debts alleged at SOR ¶¶ 1.a, 1.g, and 1.h. She answered the allegation by stating that she was not aware of the debts at that time, and also noted that these debts had been rectified. (Answer)

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The guideline sets forth several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure . . . to pay annual Federal, state, or local income tax as required.

Applicant incurred several thousand dollars in past-due state and federal income tax debt, resulting in tax liens. She incurred judgments for unpaid homeowner fees on a rental property, and other past-due debts. AG ¶¶19 (a), 19(c), and 19(f) apply to all debts alleged but for SOR ¶ 1.h, a debt for which no delinquent amount is either alleged or established.

Conditions that could mitigate financial considerations security concerns are set forth under AG ¶ 20. The following are potentially applicable:

- (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;

(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; and

g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial issues began several years ago. They are mostly related to her rental properties and her husband's real estate business. Applicant testified that one of her renters became ill and fell behind on rent. The renter then "trashed" the home and it now sits vacant. The other rental property is in good standing. The mortgages are not alleged, but two of the debts relate to past-due homeowner dues and fees. Those debts (SOR ¶¶ 1.e and 1.f) are resolved. SOR ¶ 1.a is also resolved.

Applicant's tax debts, however, are not resolved. She testified that she and her husband were audited by the IRS, and that the tax debts relate to her husband's real estate business. They hired an accountant and a law firm to challenge and address the tax debts, both state and federal, but provided no documentation that the tax debts are being resolved. Indeed, she testified that she was advised not to pay the federal tax debt. Her tax debt is ongoing, and continues to cast doubt on her current judgment, trustworthiness, and reliability. AG ¶ 20(a) does not apply.

Applicant began falling behind on her debts when her renters stopped paying rent. However, that was several years ago. Her three largest debts are the state and federal tax liens, which total well over \$70,000 in past-due tax debt. Applicant did not establish that her debts are due largely to circumstances beyond her control. Nor did she establish that she acted responsibly under the circumstances. AG ¶ 20(b) does not apply.

Applicant documented that the debts at SOR ¶¶ 1.a, 1.e, and 1.f, are paid and resolved. AG ¶ 20(d) applies to those debts. Applicant denied the cable debt at SOR ¶ 1.g but did not provide documentation to dispute responsibility for the debt. AG ¶ 20(e) does not apply to it.

Applicant documented that she and her husband retained a law firm in 2018 to address her large state and federal income tax debts. She did not provide any documentation to show that those debts are being paid, settled, or otherwise resolved. She did not establish that she has received credit counseling from a legitimate and credible source, or that her tax debts are being resolved or are under control. AG ¶ 20(c) does not apply. Nor did she establish, either through the law firm or otherwise, that she has made arrangements with the appropriate state or federal tax authorities to pay the taxes owed, or that she is in compliance with those arrangements. AG ¶ 20(f) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations . . . determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

Applicant failed to disclose any of her delinquent debts on her February 2017 SCA. She had been in financial trouble for several years, since her renters began falling behind. This led to the judgments sought by the homeowners' association, in 2013 and 2017. She also acknowledged that she knew about the tax liens and tax debt since about 2014 and 2015. Applicant had a duty to disclose those debts on her SCA, and did not do so. She also has filled out security clearance applications in the past, and has long experience in the defense industry. I find that her failure to disclose the judgments and the tax liens on her SCA was deliberate, and that AG ¶ 16(a) applies to SOR ¶ 2.a.

Applicant denied the allegation of deliberate falsification at SOR ¶ 2.b, concerning "routine accounts," putting the burden on the Government to establish it. The debt at SOR ¶ 1.h is not established as having been delinquent. Applicant asserted that she was not aware that the credit card debt (SOR ¶ 1.a) and the cable debt (SOR ¶ 1.g) were delinquent. While the accounts were delinquent, I find that the Government has not met its burden of establishing that Applicant knew that at the time she submitted her SCA and deliberately withheld that information. SOR ¶ 2.b is not established.

Under AG ¶ 17, conditions that could mitigate security concerns include:

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

Applicant's interview summary indicates that she volunteered that her federal taxes had been audited in 2009, and that she owed about \$70,000 in taxes as of 2014. While she did not address the judgments brought against her by the homeowner's

association, I conclude that she voluntarily disclosed enough about her financial issues to the interviewing agent so that AG ¶ 17(a) applies.

Guideline B, Foreign Influence

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

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 indicates 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; 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.

The nature of a nation's government, its relationship with the United States, and its human-rights record are relevant in assessing the likelihood that an applicant's family members 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, a family member or friend is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism.

Guideline B is 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).

Given the security risks in Nigeria, including the presence of Boko Haram, as well as the concerns about crime, kidnapping, and human rights issues, AG ¶¶ 7(a) and 7(b) apply based upon Applicant’s brother and sister, who are residents and citizens of Nigeria. It no longer applies to her mother-in-law, who is now deceased.

AG ¶ 8 lists 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 U.S.; and

(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.

Applicant’s brother and sister remain in Nigeria. She recently visited them, though her two most recent trips were for the funerals of her father and her mother-in-law. Her brother and sister are pastors and shop owners. Applicant also testified that they are not affected by Boko Haram because they live in the southern part of the country, and Boko Haram is active in the north. However, the heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion remains, and AG ¶ 8(a) does not apply.

Applicant has met her burden to establish her “deep and longstanding relationships and loyalties in the U.S.” She has lived in the United States since she was 24 years old. Both she and her husband, also from Nigeria, are U.S. citizens, as are their three children. They all live here and there is no indication that they intend to return to Nigeria to live. She has worked in the defense industry since 2004, and has always had Nigerian family members. While this is not dispositive, the passing of her father and mother-in-law lessens her connections there. AG ¶ 8(b) applies.

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 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.

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines, B, E, and F in my whole-person analysis.

Applicant has had financial problems for a number of years. Most of her debts involve past-due income taxes, both state and federal, and they have remained unresolved for some time. A security clearance applicant with serious tax issues, particularly concerning federal taxes, has a difficult burden to show that she warrants a finding that she is eligible for classified information. While the personal conduct and foreign influence security concerns are mitigated, Applicant has not met her burden here. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for access to classified information.

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 F:	AGAINST APPLICANT
Subparagraphs 1.a, 1.e, 1.f, 1.h:	For Applicant
Subparagraphs 1.b, 1.c, 1.d, 1.g:	Against Applicant
Paragraph 2: Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

Paragraph 3: Guideline B:

FOR APPLICANT

Subparagraphs 1.a, 1.b, 1.c:

For Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge