



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-03558
)
Applicant for Security Clearance)

Appearances

For Government:
John Lynch, Esq., Department Counsel, and Chris Morin, Esq., Department Counsel

For Applicant:
Pro se

02/16/2021

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has immediate and extended family members in Nigeria. For several months in late 2016, Applicant collaborated with his wife’s distant cousin in Nigeria, someone he had never met, in transferring several hundred thousand dollars through Applicant’s U.S. bank accounts to Nigerian or other foreign accounts. The funds were deposited into Applicant’s accounts by other individuals, who Applicant also did not know. Applicant did not provide sufficient evidence to mitigate foreign influence security concerns about his family members in Nigeria or the personal conduct security concerns about these financial practices. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 25, 2018. On March 13, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing

security concerns under Guideline B, foreign influence and Guideline E, personal conduct. 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 April 14, 2020, and elected an administrative determination in lieu of a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On May 18, 2020, Department Counsel exercised their right under ¶ E3.1.8 of Enclosure 3 of the Directive to convert the case to a hearing, and notified Applicant by letter. (Tr. 9-10) The case was assigned to me on June 26, 2020. On August 25, 2020, DOHA issued a notice scheduling the hearing for September 24, 2020.

On September 9, 2020, I issued a Case Management Order to the parties by e-mail. It concerned procedural matters relating to the health and safety of the hearing participants due to the COVID-19 pandemic. The parties were ordered to submit their proposed exhibits in advance of the hearing.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1-7. All the government exhibits were admitted without objection, though Applicant corrected one detail about a family member in his background interview summaries, GE 2 and GE 3. (Tr. 28-42) Applicant testified but submitted no exhibits. I held the record open to afford Applicant the opportunity to submit additional documentation. He timely submitted four recommendation letters, which are marked together as Applicant's Exhibit (AE) A and admitted without objection. The record closed on October 8, 2020. DOHA received the transcript (Tr.) on October 19, 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 and provide context for those facts. They are detailed in the Government's administrative notice filing (AN I) and included in the Findings of Fact. Where appropriate, I have taken notice of updated and current information from the State Department website, consistent with my obligation to make assessments based on timely information in cases involving foreign influence. ISCR Case No. 05-11292 at 4 (App. Bd. Apr. 12, 2007) ("Decisions in Guideline B cases should be made to the greatest extent possible in the context of current political conditions in the country at issue.")

Motion to Amend the SOR

On September 9, 2020, Department Counsel moved to amend the SOR to reflect that, based upon available information, Applicant had applied for access to classified

information (a security clearance), instead of access to sensitive information (a position of public trust), as had been erroneously reflected in the original SOR. The amendment changed the caption of the SOR (from “Applicant for Public Trust Position” to “Applicant for Security Clearance”) and the prefix of the case number (from “ADP” to “ISCR”), as reflected on page 1 of this decision, above. The amendment also deleted the preamble paragraph in the original SOR and replaced it with a new preamble paragraph reflecting Applicant’s correct level of access sought. The text of that preamble language is set forth in the motion, and not repeated here. (Motion to Amend SOR) The motion was addressed at the start of the hearing, and granted without objection. (Tr. 10-13) The substantive allegations in the SOR remain unchanged.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a-1.c, 2.a, and 2.b with brief explanations. His 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 now 44 years old. He was born in Nigeria. He earned his bachelor’s degree in Nigeria in 2000. (Tr. 91-92) He came to the United States in 2001, at age 24, on a student visa, to pursue a master’s degree, which he earned in 2003. (GE 1 at 9; Tr. 47-48, 92-93) He has worked for his current employer, a defense contractor, for 15 years, since 2005. (Tr. 48) He is a software engineer, and has an annual salary of about \$130,000. (Tr. 71, 73) Applicant became a U.S. citizen in 2015. Later in 2015, he applied for access to sensitive information. (GE 6, GE 7; Tr. 49) That application was granted, and he now seeks a security clearance. (GE 1; Tr. 17)

Applicant has been married twice. He was first married from 2002 to 2009. (Tr. 49, 106) He and his second wife have been married since 2010. (GE 1; Tr. 49, 98) She is a Nigerian citizen and has permanent United States resident status until July 2023. (SOR ¶ 1.b) She has applied for U.S. citizenship. (Tr. 45-46, 99-100, 229-231) They have three children, now ages 16, 8, and 5; all of them are native-born U.S. citizens. (GE 1; Tr. 50, 105-107) Applicant’s wife works at a local university, where she also earned her degree. (Tr. 100-102) They own their current home and a former residence, both in the United States. (Tr. 110-113)

Applicant’s mother and father are citizens and residents of Nigeria. (SOR ¶ 1.a) (GE 1) They are in their eighties and are retired. His father owned a restaurant. His mother was an accountant. Applicant talks to his parents about once a month. (Tr. 64, 69, 78-81, 260-261; GE 2 at 3) He testified that he does not provide them financial support. (Tr. 82) Applicant’s two siblings reside in the United Kingdom (UK). They are dual UK-Nigerian citizens. (Tr. 83)

After coming to the United States, Applicant returned to Nigeria in 2007 to see his family and to attend a friend’s wedding. (Tr. 67) He most recently travelled to Nigeria in January 2020 before traveling with family to the UK for his mother’s 80th birthday. (Tr.

64-68, 81, 225; GE 1) Applicant used his U.S. passport for this trip, though he testified that he has since renewed his Nigerian passport. (Tr. 96-98, 225-226; GE 2 at 2) Applicant also went to the UK in 2017 for his father's 80th birthday. (Tr. 81) His parents have also visited the United States in the past. (Tr. 119)

Applicant's mother-in-law was a naturalized U.S. citizen from Nigeria. She lived in the United States for many years, until passing away earlier this year. (Tr. 70-71; GE 1) His father-in-law is deceased. (GE 1; GE 2) Applicant's wife has other family in Nigeria but Applicant and his wife do not own property or have any financial interests there. (Tr. 107-109) Applicant has two old friends in Nigeria that he keeps in touch with. (Tr. 93-95)

In about 2015, Applicant and his wife started a company (H) in the United States. They hoped to use the business to export consumer products, such as baby food, to Nigeria and other foreign countries where they saw a commercial need. They sought a business partnership with large U.S. retailers but this pursuit was unsuccessful. The company remains in business. (Tr. 74, 208-213, 237-238; GE 4; GE 5)

In late 2016, Applicant's wife received a phone call from a man in Nigeria. She told Applicant that the man, Mr. E, was a distant cousin of hers who needed help with his business, and put Applicant on the phone with him. When they spoke, Mr. E told Applicant that he was a foreign-exchange broker, and that Mr. E wanted to use Applicant's bank accounts in the United States to transfer money between unknown individuals in the U.S. and one of Mr. E's clients, a travel agency in South Africa. (GE 2 at 9; Tr. 50-60, 69)

Applicant agreed to help Mr. E. Between October and December 2016, Applicant and Mr. E arranged and confirmed numerous bank transactions through a text messaging application (app). (Tr. 50-54; 120; GE 4; GE 2 at 9) The transcript of their text conversations is detailed in GE 4, a document provided by Applicant during his background interview and discussed in the hearing at Tr. 124-205. (The pages in GE 4 are in quadrants, and require a magnifying glass to read; see Tr. 77).

Applicant gave Mr. E his bank routing number and account information to facilitate the money transfers. When Mr. E or his associates in the United States had made a deposit into Applicant's bank account, Mr. E would text Applicant a photo of the deposit slip, and then Applicant would message his confirmation of the deposited funds. (Tr. 126-127)

Applicant utilized several of his accounts at multiple U.S. banks for these transactions. (Tr. 159, 170-171; GE 2 at 3, 9) He mostly used an account at Bank A, an account that was largely a business bank account for his and his wife's company, Company H. (Tr. 114, 123, 208-213; GE 5) Applicant also testified that he used the Bank A account for his own personal and household expenses. (Tr. 235-236)

Applicant testified that he would wire funds for Mr. E to various foreign bank accounts, in South Africa, China, and Turkey, as well as Nigeria. (Tr. 129-130, 160, 175-176, 184, 243-244; GE 2 at 9) Applicant did not know any of the people he transacted with. (Tr. 130) The deposits often involved large sums of money, almost always well over \$10,000 and at times over \$100,000. (Tr. 130-131, 156-158, 173, 202) Applicant would then wire the deposited funds to Mr. E's client, the travel company, or to other foreign accounts. (GE 4 at 2) Most of the funds were in U.S. dollars but some of the funds were in "naira," a Nigerian currency. (Tr. 143-146)

Applicant testified that he kept his wife informed about the transactions with Mr. E. (Tr. 148-153) The app transcript confirms this. (GE 4 at 1, GE 4 at 5) ("Please talk to [Applicant's wife] about it.") By mid-November 2016, Applicant appears to have wanted Company H to be more formally involved with the money transfers. As he told Mr. E in a text on November 9, 2016, however, he recognized that Company H was not "licensed to deal in currency. Otherwise any account will eventually be flagged if funds (especially large amounts) are consistently wired out of the country. This will need to be sorted properly to ensure this is sustainable." (GE 4 at 5)

A week later, that is exactly what happened, as Applicant reported to Mr E that the bank had closed the account and refunded him the balance by check. (Tr. 56-60, 189-194; GE 2 at 9; GE 4 at 5) Applicant said in his background interview that he told Mr. E to stop arranging the deposits, but they continued for a time. (GE 2 at 9)

As late as December 15, 2016, though, Applicant was still pursuing a role for Company H in the process. ("The document still doesn't state what [Company H's] role is in this process; when [Company H's] role is established, there's still the issue of licensing to deal in / distribute currency here in the U.S.") (GE 4 at 5)

Applicant said he had one more phone call with Mr. E after December 2016, but has had no contact with him since then. Applicant's wife no longer has contact with Mr E. (Tr. 205-207) Applicant and Mr. E never met. (Tr. 225)

Applicant was interviewed by the FBI in 2017, and cooperated with their investigation. He said in his background interview that the FBI told him that the transactions suggested possible money laundering or a scam. Neither Applicant nor his wife were charged or arrested. (GE 2 at 9; Tr. 205, 229)

Applicant testified that at the time he began the transactions with Mr. E, he "thought nothing of it" because it "seemed like something legitimate" (50-51) He said he "just thought I was doing my wife's family a favor. And then it turned into a nightmare." (Tr. 75) Applicant also testified that while he was engaged in the transactions with Mr. E, he became concerned about them. He testified that he "didn't want to have anything to do with any kind of fraud. I told him this on numerous occasions." He said the only reason he did it was because his wife recommended it. (Tr. 241, 242)

Applicant did not list Mr. E as a foreign contact on his SCA, nor did he list any of the large financial transactions they had. (GE 1) In particular, Applicant did not disclose his relationship with Mr. E in answering questions on his SCA such as “Have you EVER provided financial support for any foreign national?”; and “Have you in the last seven (7) years provided advice or support to any individual associated with a foreign business or other foreign organization that you have not previously listed as a former employer?” and “Has any foreign national in the last seven (7) years offered you a job, asked you to work as a consultant or consider employment with them?” and “Have you in the last seven (7) years been involved in any other type of business venture with a foreign national not described above (own, co-own, serve as business consultant, provide financial support, etc.)” (GE 1 at 29-30) Applicant answered “No” to all of these questions. Falsification of Applicant’s SCA is not alleged in the SOR under Guideline E, but this evidence can be considered in weighing mitigation and under the whole-person concept.

Applicant also did not disclose the transactions with Mr. E during his background interviews and did not discuss them until he was confronted about them. (Tr. 147-148, 207; GE 1, GE 2, GE 3) Applicant indicated that he did not initially disclose the transactions because he assumed the government already knew about them. He was also embarrassed about them and wanted to be done with the issue. (GE 2 at 8-9)

Applicant has a cousin in Nigeria (Mr. O) to whom he is particularly close. (SOR ¶ 1.c) Mr. O is “like a brother” to him. (Tr. 241) Mr. O was born in Nigeria. He lived in the United States from 1990 to about 2017. He is a dual U.S.-Nigerian citizen. (Tr. 46-47, 89) (In addressing the admissibility of GE 2 and GE 3, Applicant’s background interview summaries, Applicant adopted them as accurate except where they describe Mr. O as a Nigerian citizen only.) (Tr. 38-40) In fact, the summaries indicate that Applicant described Mr. O as a dual citizen. (See, e.g., GE 2 at 6))

Applicant saw Mr. O on his trip to Nigeria in 2020. He said the cousin owns a farm. (Tr. 68-69, 215, 225) Applicant acknowledged that they are close and they remain in quarterly contact. (Tr. 90-91)

In early January 2019, Applicant made several deposits into U.S. bank accounts, using funds from his cousin Mr. O. The deposits totaled about \$72,000. Applicant used the money to purchase a luxury vehicle for Mr. O in the U.S., and to ship the vehicle to him in Nigeria. (SOR ¶ 2.b) (Tr. 60-62; 214-218, 227-229; GE 2 at 6) Applicant acknowledged that “there are probably only two or three people that I would even entertain buying a car for now in hindsight. And [Mr. O] is one of them.” (Tr. 240) Applicant otherwise denied that he had ever wired money to Mr. O, and denied that Mr O was involved with the transactions Applicant had with Mr. E. (Tr. 219)

Applicant had engaged in similar conduct previously. As addressed in the summary of Applicant’s April 5, 2019 background interview, Applicant has made similar purchases on his father’s behalf about three times in recent years, with funds his father

deposited in Applicant's bank account. (Tr. 219-223; GE 2 at 10-11) Those transactions were not alleged in the SOR.

Applicant also bought a sport utility vehicle for a friend in Nigeria in 2009 or 2010, and shipped the vehicle to him there, using about \$58,000 in funds the friend deposited, in multiple deposits, in Applicant's U.S. bank account. (Tr. 86-89; GE 2 at 7) Applicant testified that he has made no other wire transfers to any foreign companies or people. (Tr. 223-224) These transactions are not alleged in the SOR.

Applicant denied doing anything illegal. (Tr. 64) He never suspected his actions might be problematic until he was contacted by the FBI. (GE 2 at 9) Applicant also testified that there was "no chance in hell" that he would again engage in financial transactions like he did in 2016 with Mr. E, because "I'm living [in] hell already." (Tr. 239) "I would never do that again. Never," he said. (Tr. 241)

Applicant testified that his allegiance is to the United States, and it "wouldn't even be a hard decision for me." (Tr. 262) He has spent his adult life here. He has returned to Nigeria only three times since emigrating to the U.S. He recognizes his poor judgment in hindsight and said he would not engage in that conduct again. (Tr. 261-266)

Applicant provided reference letters from several personal friends and work colleagues. They have all known him for 12-15 years, and attest to his trustworthiness, discipline, and dedication to his work; as well as his honesty and ability to protect sensitive information. (AE A)

Nigeria

Nigeria is a federal republic located in Western Africa. Its current president took office in 2015, following the first democratic transfer of power in the country's history. He was reelected in 2019. Nigeria has faced many challenges, including terrorist activity, sectarian conflicts, crime, kidnapping, and widespread mistrust of the government.

The U.S. State Department advises U.S. citizens to reconsider travel to Nigeria due to COVID-19, crime, terrorism, civil unrest, kidnapping, and maritime crimes. Boko Haram and ISIS-West Africa, both U.S.-designated Foreign Terrorist Organizations, are active in Nigeria, and seek to replace the Nigerian government with an Islamic state. Attacks against state and civilian targets, primarily northern Nigerian states continued in recent years.

Financial and internet romance scams are prevalent in Nigeria. Scams are often initiated through Internet postings/profiles or by unsolicited emails and letters. Scammers almost always pose as U.S. citizens who have no one else to turn to for help. Common scams include: romance/online dating; money transfers; contracts with promises of large commissions; and inheritance notices. The fact that money transfers are prevalent scams in Nigeria is of particular relevance in this case.

Human-rights issues in Nigeria in recent years have included unlawful and arbitrary killings, forced disappearances, torture by both government and non-state actors, and arbitrary detention, often based on little evidence. Nigeria has one of the world's lowest per capita social spending levels, resulting in sixty-five percent of its 186 million citizens living in extreme poverty. These conditions breed disaffection in youth, provide an entry point for Islamic extremism, entice corruption, and promote ineffective governance.

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

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 B, Foreign Influence

AG ¶ 6 details 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;

(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;

(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.

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).

A heightened security risk in Nigeria is established by the administratively noticed facts in the record. The security risks in Nigeria include the presence of Boko Haram and ISIS West Africa, as well as the more general concerns about crime, kidnapping, terrorism, and human rights issues. Of greatest relevance in this case, however, is the fact that financial scams are prevalent in Nigeria, particularly involving money transfers – conduct that is at the very heart of this case.

Applicant’s elderly parents (SOR ¶ 1.a) are citizens and residents of Nigeria. Applicant is understandably close to them. Applicant’s cousin, Mr. O (SOR ¶ 1.c) is a dual U.S.-Nigerian citizen who now lives in Nigeria. He and Applicant are very close, and Applicant regards him like a brother. Applicant has helped Mr. O purchase a car in the United States. (SOR ¶ 2.b, discussed below under Guideline E). AG ¶¶ 7(a) and 7(b) apply to Applicant’s parents and to his cousin, Mr. O. (Mr. E, his wife’s cousin, is not alleged, nor are Applicant’s two blood siblings, as they live in the United Kingdom.)

In addition, Applicant’s wife is a Nigerian citizen and permanent U.S. resident. (SOR ¶ 1.b) Her presence in the United States limits her security risk. However, it was she who put Applicant in touch with Mr. E, her distant cousin in Nigeria, whose interactions with Applicant are at the heart of the Guideline E case here, discussed below. AG ¶ 7(e) applies to her, as do both AG ¶¶ 7(a) and 7(b).

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.;

(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 or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant has lived in the United States since his early 20s. He and his wife, a Nigerian citizen and permanent U.S. resident, have three children, all native-born U.S. citizens. They all live here and there is no indication that they intend to return to Nigeria to live. AG ¶ 8(b) therefore has some application.

However, the foreign influence concerns here are significant because of Nigeria's continuing instability and the persistent threat of terrorism and violence by armed insurgents. Applicant has family members there to whom he quite understandably continues to have a close bond of affection and obligation. The heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion remains, and AG ¶ 8(a) does not apply.

Applicant's parents remain in Nigeria. So does his cousin, Mr. O, who he considers to be like a brother, and for whom Applicant helped purchase and ship a luxury vehicle in 2019, which he said he might consider doing again. Applicant recently visited them, in early 2020. Applicant's wife also facilitated his contact and relationship with Mr. E in late 2016, as they engaged in a series of highly suspicious money transfers. Applicant may in the future be placed in a position where he has conflicted interests. AG ¶¶ 8(b) and 8(c) do not fully apply. Applicant has not met his heavy burden of persuasion in establishing that the foreign influence security concerns are mitigated.

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:

(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:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources; 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.

The two Guideline E allegations both concern instances in which Applicant facilitated money transfers, through his U.S. bank accounts, for Nigerian citizens and residents.

First, for several months in late 2016, Applicant collaborated with Mr. E, a Nigerian citizen and resident who his wife told him was an extended Nigerian family member of hers, someone Applicant had never met, in transferring several hundred thousand dollars of U.S. funds through Applicant's U.S. bank accounts to Nigerian or other foreign accounts, in China, South Africa, and Turkey. The funds were deposited into Applicant's accounts by other individuals, who Applicant also did not know. Applicant's U.S. bank subsequently froze his bank account due to the suspicious activity, and his interactions with Mr. E ended in December 2016. They have not had any real contact since. In 2017, the FBI interviewed Applicant as part of an investigation

into possible money laundering or other illegal activity, but neither Applicant nor his wife were charged.

Second, in 2019, Applicant purchased a luxury car in the U.S. for a cousin in Nigeria, Mr. O, a man who Applicant considers to be like a brother. Applicant then shipped the car to Mr. O, in Nigeria. He used about \$72,000 in funds that Mr. O deposited in Applicant's bank account. (SOR ¶ 2.b)

Applicant's collaboration with Mr. E in fall 2016 was not alleged under Guideline B (as it might have been, since AG ¶¶ 7(a) and 7(b) would seem to apply, due to the potential for foreign influence, and the risk of exploitation, manipulation, or duress suggested by Applicant's conduct). Instead, it was alleged under Guideline E, since Applicant's conduct showed highly questionable judgment, under AG ¶ 15, the general personal conduct security concern. AG ¶ 16(e) also applies. More generally, the "catch-all" disqualifying condition, AG ¶¶ 16(c) is also applicable to SOR ¶ 2.a.

SOR ¶ 2.b is more straight-forward. Applicant's cousin gave Applicant money to buy a car for him in the U.S., and ship it to Nigeria, and Applicant did so. Unlike Mr. E, Applicant knows Mr. O quite well. They are cousins, and Applicant regards Mr. O as a brother. This was also a single transaction for a specific, well-explained purpose. Standing alone, then, SOR ¶ 2.b does not establish or suggest security significant conduct, even though Applicant's relationship with Mr. E is an independent security issue under Guideline B, discussed above. (SOR ¶ 1.c)

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

(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; and

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

Applicant's purchase of a luxury auto for his cousin, Mr. O, is mitigated because, while it concerns a large amount of money, the transaction was for a specific, explained, and reasonable purpose, with an individual Applicant knows very well. Applicant indicated that he might consider buying another car for Mr. O, but such conduct would not itself cast doubt on Applicant's judgment. SOR ¶ 2.b is found in Applicant's favor.

The larger concern in this case is Applicant's interactions with Mr. E. Applicant engaged in numerous money transfers with multiple individuals, none of whom he ever met. The transactions concerned several hundred thousand dollars, always in high dollar amounts. Applicant was not charged with a crime, and I cannot speculate how likely any charges might have been. But it seems likely that Applicant avoided such charges because he was inexperienced and naive, as he may not have recognized that he was possibly engaging in criminal conduct. And even if he was not, Applicant's interactions with Mr. E showed a pattern of poor judgment that is difficult to mitigate.

Applicant now recognizes the troubling nature of his interactions with Mr. E, and he has expressed regret for his conduct. He also has not engaged in subsequent activity with unknown persons. AG ¶¶ 17(d) and 17(e) therefore have some application. However, he also failed to disclose the conduct during the security clearance application process until he was confronted by the interviewing agent. This lack of candor was not alleged, so it may not be considered as disqualifying conduct. However, it may be considered in weighing mitigation and under the whole-person concept. In that regard, Applicant's lack of candor to the government about this security-significant conduct does not suggest someone who has the judgment who warrants access to classified information.

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 and E in my whole-person analysis. I also considered Applicant's favorable recommendations from friends and co-workers.

Applicant has immediate and extended family members in Nigeria. Understandably, he remains close to them. Nigeria remains a heightened risk country under Guideline B for the reasons set forth in the Government's administrative notice filing. Of particular concern is Applicant's pattern of engaging in money transfers with a Nigerian relative of his wife, who he did not know. Applicant's wife facilitated his contact and relationship with Mr. E in late 2016, as they engaged in a series of highly suspicious money transfers.

A security clearance applicant with a history of such activity and ongoing family connections with a heightened risk country such as Nigeria has a high burden to establish that resulting foreign influence and personal conduct concerns are mitigated. This is particularly the case when suspicious money transfers to and from Nigeria -- the very conduct Applicant engaged in -- is a specific reason why Nigeria is a heightened risk country. Applicant has not met his burden of showing that the security concerns established by his conduct and his family connections to Nigeria are fully mitigated. 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 B:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2: Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	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