



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



In the matter of:)
)
) ISCR Case No. 21-00255
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Carl Marrone, Esq.

04/26/2022

Decision

RIVERA, Juan J., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 24, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). Applicant responded to the SOR on March 31, 2021, and requested a hearing before an administrative judge.

The case was assigned to me on August 30, 2021. The hearing was convened as scheduled on April 1, 2022. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant’s objection to GE 3 was overruled. GE 4 was marked and made part of the record, but it is not substantive evidence. Applicant testified, called four witnesses, and submitted Applicant’s Exhibit (AE) 1, comprised of tabs A through Z, which were admitted without objection. The transcript was received on April 11, 2022.

Procedural Issue

I contacted Applicant on September 11, 2021, to schedule his hearing. Applicant requested a delay to retain counsel, and he retained counsel in November 2021. The hearing was scheduled for January 11, 2022. It was delayed because Applicant's counsel developed COVID-19. The hearing was rescheduled for April 1, 2022.

Department Counsel requested that I take administrative notice of certain facts about the Federal Republic of Nigeria (Nigeria). Applicant objected to some of the Federal background documents because they were published in 2019. He did not object to the relevance of the documents. He objected because the documents were unduly prejudicial as Applicant has no control over what happened in Nigeria. (Tr. 11) I offered Applicant the opportunity to supplement the record with more recent documents, but no additional documents were submitted. The objection concerns the weight of the evidence, and it was overruled. I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is the significant threat of terrorism and ongoing human rights problems in Nigeria.

Findings of Fact

Applicant is a 36-year-old employee of a federal contractor. He is seeking eligibility for a clearance to work in contracts with federal agencies. Applicant was born and raised in Nigeria to Nigerian parents. He was raised Catholic and attended a Catholic primary school. He completed high school and the equivalent of a bachelor's degree in Nigeria in 2009. He stated that he had difficulty finding a job after college because neither he nor his family had any connections to people in the government. He worked for a construction firm as a supervisor between college and 2014 when he immigrated to the United States. (Tr. 28)

Applicant met his U.S.-born wife in a social media dating website in 2012. They dated online for over a year. She visited him in Nigeria in late 2013 or early 2014, but returned to the United States because she missed her family. She sponsored him into the United States, and Applicant entered the United States on November 28, 2014, at age 28. They were married in the United States in December 2014. They separated in December 2018, because she was spending their income quicker than they could earn it. The divorce was final in January 2021. His son, age four, was born in the United States. He shares custody of his son with his son's mother. Applicant and his ex-wife have a friendly, amicable relationship. She testified favorably at his hearing and provided corroborating evidence to his prior statements and testimony. (Tr. 89-95)

Applicant became a naturalized U.S. citizen on June 11, 2019. He renounced his Nigerian citizenship on February 8, 2021. He also relinquished his Nigerian passport. Applicant's parents and five sisters are citizens and resident of Nigeria, except for an older sister who is currently residing in Scotland attending school for a master's degree. They all live in the house where Applicant grew up. His father, a retired yam and casaba farmer, is 74 years old. His mother is 55 years old, and she is a retired hairdresser and

has a small store where she sells hair products. (Tr. 53) Another sister has a store where she sells produce, and the remaining three sisters are attending school and live at home during school breaks. (Tr. 62-63) There is no evidence to show that Applicant or any of his family members have any connection to the Nigerian government, military, or police. Applicant testified that he and his family are Christians. Applicant's family members in Nigeria receive no benefits or pensions from the Nigerian government. His parents earn money from renting part of their home. (Tr. 86)

Since immigrating to the United States in 2014, Applicant provided financial assistance to his parents about four times for a total of about \$300. He stated the last time he provided financial assistance to his parents was in 2017. He traveled to Nigeria in 2016 and 2018 to visit his family. He has frequent telephone contact with his family in Nigeria, but their conversations are limited to family matters and health related questions.

Applicant has no property or financial interests in Nigeria, other than a small bank account with about \$2.00 on it that he cannot close. To close the account, he would have to travel to Nigeria and obtain a Nigerian identification card, which he does not want to do. Applicant bought a home in the United States in 2021 for \$365,000. He and his son reside in their home during the weeks he has custody of him. Applicant has a \$21,000 retirement account, and two bank accounts with about \$5,000.

Applicant considers the United States his home. He expressed his undivided loyalty to the United States. He is loyal to this country, and he is a patriotic person. He is grateful to be here and for the opportunities the United States provides for him and his son. His sisters in Nigeria would also like the opportunity to immigrate to the United States. He credibly testified that his family in Nigeria could not be used to coerce or intimidate him into revealing classified information, and that he would report any attempt to do so.

Applicant called four witnesses, and he submitted letters attesting to his excellent job performance and strong moral character. He is praised for his professionalism, work ethic, reliability, honesty, dependability, and trustworthiness. (AE 1 Tabs B-G and K-Z)

Policies

This case is adjudicated under Executive Order (EO) 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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(c), 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant 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.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign

contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (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
- (f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant parents and sisters are citizens and residents of Nigeria, except for an older sister who is residing in Scotland while attending school. Applicant has no property or financial interest in Nigeria. The last time he traveled to Nigeria was in 2018. Notwithstanding, the potential for terrorist and other violence against U.S. interests and citizens remains high in Nigeria, and it continues to have human rights problems. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The above disqualifying conditions have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the

individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(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.

I considered the totality of Applicant's ties to Nigeria. Guideline B is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding sensitive 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.

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. 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. 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. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant immigrated to the United States in 2014 and became a U.S. citizen in 2019. His son was born in the United States. He purchased a \$365,000 home in the United States and owns a \$21,000 retirement account. He expressed his undivided allegiance to the United States, which he considers his home. He credibly testified that his family in Nigeria could not be used to coerce or intimidate him into revealing classified information.

I find that Applicant's ties to Nigeria are outweighed by his deep and long-standing relationships and loyalties in the United States. It is unlikely he will be placed in a position of having to choose between the interests of the United States and the interests of Nigeria. There is no conflict of interest, because he can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable, and AG ¶ 8(f) is partially applicable.

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 Guideline B in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence security concerns.

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.c:	For Applicant

Conclusion

It is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

JUAN J. RIVERA
Administrative Judge