

KEYWORD: Foreign Preference: Foreign Influence

DIGEST: Applicant is a native of Nigeria who became a naturalized United States citizen in October 1996. He renewed his Nigerian passport in September 2002 for convenience in traveling to Nigeria to visit family members, including his mother. He has since surrendered his Nigerian passport and notified the Nigerian Embassy of his intent to renounce his Nigerian citizenship, in mitigation of the Foreign Preference concerns. Foreign Influence concerns about the Nigerian citizenship and residency of several family members are mitigated by his strong ties to the United States developed since 1989. Clearance is granted.

CASENO: 05-10606.h1

DATE: 07/30/2007

DATE: July 30, 2007

In re:	)	
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SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

Fahryn Hoffman, Esq., Department Counsel

**FOR APPLICANT**

Josiah M. Black, Esq.

**SYNOPSIS**

Applicant is a native of Nigeria who became a naturalized United States citizen in October 1996. He renewed his Nigerian passport in September 2002 for convenience in traveling to Nigeria to visit family members, including his mother. He has since surrendered his Nigerian passport and notified the Nigerian Embassy of his intent to renounce his Nigerian citizenship, in mitigation of the Foreign Preference concerns. Foreign Influence concerns about the Nigerian citizenship and residency of several family members are mitigated by his strong ties to the United States developed since 1989. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on January 23, 2007, detailing the basis for its decision—security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR on February 5, 2007, and elected to have a hearing before an administrative judge.

The case was assigned to me on March 7, 2007, with a request pending from the government that the administrative judge take notice of certain facts pertaining to Nigeria. The government submitted five documents in support of its request. On March 14, 2007, counsel for Applicant entered his appearance. On March 20, 2007, I gave Applicant until April 20, 2007, to file his response to the government's request for administrative notice. On April 20, 2007, Applicant filed his objections and proposed alternative facts for administrative notice. On April 26, 2007, the government was given until May 4, 2007, to respond to Applicant's request for administrative notice. The government entered various objections on May 4, 2007.

I convened a hearing on May 8, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Four government exhibits (Ex. 1-4) and 11 Applicant exhibits (A-K) were admitted, and testimony was taken from Applicant, his spouse, and the facility security officer at his workplace. A transcript (Tr.) of the hearing was received on May 17, 2007.

### **RULINGS ON PROCEDURE**

Both parties have requested that I take administrative notice of several facts concerning Nigeria. Authority to consider the requests is set forth in ¶ E3.1.10 of Department of Defense Directive 5220.6 (*The Administrative Judge may rule on questions of procedure, discovery, and evidence and shall conduct all proceedings in a fair, timely, and orderly manner.*). The DOHA Appeal Board has ruled that administrative or official notice in administrative proceedings is broader than judicial notice under the Federal Rules of Evidence. In ISCR Case No. 02-24875 (decided Oct. 12, 2006), the Appeal Board found no error by a DOHA administrative judge who took

administrative notice of a U.S. State Department Country Report, as the document was an official U.S. government report relevant to the issues in the case before him, and it was provided in advance to the applicant who had an opportunity to rebut its contents or to present alternative information for the judge to notice.

Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case before me. The government relies on a Congressional Research Service publication, *CRS Report for Congress: Nigeria in Political Transition*, dated July 28, 2006, and four official U.S. State Department publications: *Background Note: Nigeria*, dated September 2006; *Consular Information Sheet, Nigeria*, dated January 13, 2006; *Travel Warning: Nigeria*, dated January 17, 2007; and *Nigeria, Country Reports on Human Rights Practices-2005*, dated March 8, 2006. Applicant submitted a decision on remand of a DOHA administrative judge in ISCR Case No. 05-03635, dated January 16, 2007; the U.S. State Department's *Background Note: Nigeria* of September 2006; a White House press release dated March 29, 2006; three Internet news reports of the British Broadcasting Company; and one Online NewsHour Update of the Public Broadcasting Company. After reviewing and weighing the reliability of the source documentation provided by the parties,<sup>1</sup> I took administrative notice of certain facts as set forth below.

### **FINDINGS OF FACT**

DOHA alleged under Guideline C, Foreign Preference, that Applicant exercised dual citizenship with the U.S. and Nigeria (SOR ¶ 1.a), that as a U.S. naturalized citizen he acquired a Nigerian passport in September 2002 (¶ 1.c) which was valid as of a July 2006 interview (¶ 1.b), and he used that passport to travel to Nigeria in 2002, 2003, 2005, and 2006. Also alleged were Foreign Influence (Guideline B) concerns about the Nigerian citizenship and residency of his mother (¶ 2.a) and siblings (¶ 2.b), the Nigerian citizenship of his mother-in-law, who was residing with him in the U.S. (¶ 2.c), and his travel to Nigeria in 1997, 2002, 2003, 2005, and 2006 (¶ 2.d).

In his answer to the SOR, Applicant admitted he exercises dual citizenship with the U.S. and Nigeria, and that while he renewed and held a Nigerian passport as alleged, he had destroyed the passport and did not intend to reacquire one. He also admitted he had traveled to Nigeria as alleged to visit his family, and had used his Nigerian passport for the convenience of not having to travel to another state to obtain a visa. Applicant also admitted the Nigerian residency and/or citizenship of family members, but added that his mother-in-law has permanent U.S. residency. He explained he traveled to Nigeria in 1997 to get married, in 2002 to serve as a groomsman at a friend's wedding, in 2003 on his father's death, and in 2005 and 2006 to visit his ailing mother.

Applicant's admissions are incorporated as findings of fact. After a thorough review and consideration of the pleadings, exhibits, and transcript, and having agreed to take administrative notice, I make the following relevant and material additional findings:

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<sup>1</sup>The official publications of the U.S. government are viewed as more authoritative than web published reports of news agencies. The facts for administrative notice accepted by a DOHA colleague do not represent the official position of DOHA. They were considered to the extent they could be substantiated by source documents before me for review.

Applicant is a 43-year-old senior systems engineer, who has worked for his current employer since June 2000. He was granted a secret-level security clearance in December 1996 while serving on active duty in the United States Army.

Applicant was born in southwestern Nigeria in 1963. His father worked as a security guard and as a tutor in an elementary school. He also got involved in subsistence farming to care for his family. Applicant's mother had a stall outside of their home from which she sold produce to the local populace that she had bought from a wholesaler. They raised their eight children in Nigeria.

Applicant has lived continuously in the United States since June 1989. He came to the U.S. on a tourist visa and met his first wife, a U.S. citizen, at a club. They married in December 1989, but divorced four years later.

Applicant worked as a security officer at a local university for about two years. In 1991, he began English studies at another university in the area while working as a loss prevention agent in the retail sector. Struggling with a calculus class, he decided to join the U.S. military after he learned from a recently discharged veteran how his service for the U.S. had affected him.

On May 28, 1993, Applicant entered on active duty in the U.S. Army at the rank of private (E1). In November 1993, he married his second wife, who was also a native of Nigeria. Three years into his four-year enlistment term, he was promoted to sergeant (E5) and selected for the position of supply sergeant in a new missile command. With his ability to perform his duties limited because of his lack of security clearance, the U.S. Army filed an application for U.S. citizenship on his behalf in June or July 1996. In October 1996, he took the oath of U.S. naturalization, vowing to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or perform noncombatant service or civilian service on behalf of the U.S. if required. After he was granted a secret-level clearance in early December 1996. He fulfilled his duties as a supply sergeant with distinction, and in late February 1997, he was awarded an Army Commendation Medal, signed off by the post's commanding officer, a major general.

Applicant traveled to Nigeria to see his family members from March 23, 1997 to June 15, 1997. He obtained a visa so that he could travel on his U.S. passport, which was issued on October 25, 1996. Applicant was discharged from active duty in May 1997 at the completion of his enlistment term, and he returned to his civilian job as a loss prevention agent with a department store.

Applicant and his second wife divorced in November 1997. They had been separated since 1995. In mid-December 1997, Applicant traveled to Nigeria on his U.S. passport for his wedding to his third wife. As required, he obtained a visa authorizing a single trip of 60 days duration on his U.S. passport. Applicant had met his spouse that previous Spring when he visited his eldest sister at work. His spouse was a nursing student there. They married in January 1998, and she emigrated to the U.S. in March 1998.

Over the 1998/99 time frame, he worked as a co-op engineer for a defense contractor and pursued undergraduate studies at the state university while continuing to work in loss prevention. On earning his bachelor of science degree in electrical engineering, he pursued his master's degree

after starting with his present employer in June 2000 as an entry-level electrical engineer I. In this professional position, he served as a technician testing antenna components and design amplifiers. In 2002, he was promoted to a systems engineer II position.

On or about August 22, 2002, Applicant went to Nigeria to serve as a groomsman at a friend's wedding. While in Nigeria, he applied for a Nigerian passport that was issued on September 5, 2002, and valid to September 4, 2007, for the convenience of future travel to Nigeria to visit family members. He would not have to travel to the Nigerian Consulate in New York to obtain the visa needed to enter Nigeria on his U.S. passport. Applicant presented both his U.S. and Nigerian passports when he departed Nigeria on September 6, 2002, although only the Nigerian passport was stamped by the border control officer. His U.S. passport was stamped in transit at the airport in Amsterdam. Applicant took a pleasure trip to the Netherlands from mid-July 2003 to mid-August 2003. He entered and exited the country on his U.S. passport.

Applicant went to Nigeria from November 21, 2003 to December 2, 2003, for his father's funeral services. He traveled with both his Nigerian and U.S. passports. His Nigerian passport was stamped on entry and his U.S. passport on his departure from Nigeria.

Applicant's spouse became a naturalized U.S. citizen on February 14, 2004. On September 23, 2004, she was issued a U.S. passport that is valid to September 2014.

At work Applicant continued to progress in responsibilities. In 2003, his workstation was at a hardware facility in a closed area. He assumed a lead position in data analysis in a test planning group in 2004. On June 10, 2004, Applicant executed a security clearance application (SF 86). He disclosed that he and his spouse were dual citizens of Nigeria. In response to question 16 concerning foreign travel, Applicant listed pleasure trips to Nigeria from March to June 1997, from August to September 2002, and from November 2003 to December 2003, and to the United Kingdom in late May 2000 for 12 days and the Netherlands in July 2003 for one month. He did not include his trip to Nigeria for his wedding in answer to question 16, but indicated he married his spouse in Nigeria in January 1998. Applicant disclosed that he had a Nigerian passport valid to September 4, 2007. Applicant also reported the Nigerian citizenship and residency of his mother, but that his mother-in-law, also a Nigerian citizen, was living with his family in the U.S.

On November 11, 2004, Applicant was interviewed about his foreign connections by a special investigator for the federal Office of Personnel Management Investigations Service. Applicant executed an affidavit explaining that he holds dual citizenship with Nigeria and the U.S. because it never crossed his mind to renounce it. He denied maintaining Nigerian citizenship to protect a financial interest. He admitted he had voted in Nigeria, but that it was before he became a U.S. citizen. While he understood he had rights, privileges, and obligations because of his Nigerian citizenship, he did not see that he had to meet any of those obligations. Applicant expressed his willingness to renounce his Nigerian citizenship "if necessary as a condition of access."

Applicant traveled to Nigeria in 2005 and 2006 to see his ill mother. He took both his Nigerian and U.S. passports. The Nigerian passport was stamped on entry both times, on July 8, 2005, and on May 25, 2006, and on exit from Nigeria on June 22, 2006. His U.S. passport was stamped on his departure from Nigeria on July 26, 2005. Applicant reported all his foreign travel to his employer as he had been trained to do in the U.S. Army, even when it was not required. On April

21, 2006, Applicant's spouse was issued a Nigerian passport valid for five years. She traveled to Nigeria within the week with both her U.S. and Nigerian passports, and both were stamped by border control on April 28, 2006. She had not returned home since she emigrated, not traveling even for her father's funeral, and she went to see his resting place.

On January 23, 2007, DOHA notified the Applicant in the SOR that his possession of a foreign passport raised concerns of foreign preference. He had not been previously advised that holding a foreign passport was inconsistent with his security responsibilities. On February 5, 2007, Applicant went to the plant's facility security officer (FSO) and she shredded his Nigerian passport. Before it was destroyed, the FSO made a copy of the cover, of the identification page, and of page 32 containing three stamps from Nigerian immigration authorities dated November 21, 2003, July 8, 2005, and June 22, 2006.

On or about March 7, 2007, Applicant telephoned the Nigerian Embassy and inquired about the process to renounce his Nigerian citizenship. On the advice of embassy personnel, Applicant notified the Nigerian Embassy by letter of March 15, 2007, of his intent to renounce his Nigerian citizenship and of his destruction of his Nigerian passport. The Embassy received the documents on March 19, 2007. On March 19, 2007, Applicant's spouse surrendered her Nigerian passport to the Nigerian Embassy with a letter serving to formally notify the Nigerian authorities of her intent to renounce her Nigerian citizenship. As of May 8, 2007, neither Applicant nor his spouse had received any confirmation that Nigerian officials had accepted their requests to renounce. He was led to understand that a letter of intent to renounce sent with the Nigerian passport was all that was required.

On April 17, 2007, Applicant was issued his U.S. passport on renewal. The passport is valid to April 16, 2017. He has no intent to reacquire a Nigerian passport. He and his spouse intend to reside permanently in the U.S.. Their four children (an eight-year-old, a six-year-old, and three-year-old fraternal twins) were born in the U.S.,<sup>2</sup> and have never been to Nigeria. Applicant and his spouse own their home, and have savings and assets in 401(k) accounts in the U.S. Applicant is also vested in a retirement plan with his employer. They have no foreign assets. Applicant has voted in every national election in the U.S. since he became a citizen. He has not voted in a Nigerian election since he acquired U.S. citizenship. Applicant's spouse is a registered nurse at a nearby hospital.

Applicant's mother, a Nigerian resident citizen as of May 2007, still had the produce stall outside of her home, but she was no longer actively involved in the buying and selling of produce. She visited Applicant in the U.S. when his first son was born in 1999.

Applicant's older brother is a lawyer employed as a deputy director and head of the legal services division, a legal advisory department of the government agency tasked with oversight of securities markets in Nigeria. His job location was recently changed to the head office in Nigeria's capital. This brother came to the U.S. in 1995 for training. Applicant understands that his brother works primarily on training issues but that he also drafts policy on trade in securities, provides advice

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<sup>2</sup>Applicant testified his children are citizens solely of the U.S. (Tr. 46). No evidence was presented of the citizenship laws of Nigeria, so it cannot be determined whether or not they are also derivative citizens of Nigeria based on descent (birth to Nigerian citizens). Applicant has not taken any action to acquire Nigerian citizenship for them or to exercise their Nigerian citizenship if they are citizens.

as to complaints of fraud and advantage, and monitors compliance by Nigerian companies. Applicant's younger brother is a resident citizen of the Netherlands. He is employed in a factory building engines. Applicant has another brother who works as a security officer in a hospital in England.

Applicant's three sisters are resident citizens of Nigeria. His oldest sister is the chief nursing officer at a government-run university teaching hospital. She started there as a pupil midwife in August 1977 and rose through the ranks to her present position in January 2006. She is divorced from a physician in private practice. The middle sister is principal of a "junior secondary" public school in Nigeria. She started as a teacher with the school district in November 1982, and she is married to a botanist employed by a research company. Applicant's youngest sister has been the chief nursing officer at a local government-owned hospital since January 2003, having started as a staff nurse in October 1979. Since May 2001, she has secondary duties as an instructor in the state school of nursing under the ministry of health. She is married to a remodeling contractor. Applicant's sisters reside near his mother in Nigeria.

None of Applicant's siblings have served in the Nigerian military. His siblings have standard benefit packages commensurate with their respective career positions, which in the case of his eldest sister includes housing and transportation allowances in addition to retirement.

With young children, his studies, and working about 65 hours weekly for the defense contractor, Applicant has little free time to contact his relatives in Nigeria. He has telephone contact primarily with his mother, whom he telephones once quarterly to check on her well being. Applicant sends his mother money about \$200 or \$300 around Christmas or New Year's as a gift. She lives in the home that was inherited by her eldest son on her husband's death. The other half of the house is rented and she lives off the income from the tenancy. Applicant's contact with his siblings is limited to Christmas and at New Year's. His siblings are aware he is an electrical engineer. Only his attorney brother knows of his employer. None of his siblings know he has access to classified material in his job or his specific job duties. Applicant does not expect to inherit any asset in Nigeria, as the first born son traditionally gets everything. Applicant respects what the U.S. stands for, and he denies he would do anything to jeopardize the security and defense of the U.S. even if his relatives were threatened ("I cannot choose my family over America . . . People die to protect freedom that I enjoy, and I was willing to be one of those.").

Applicant's mother-in-law has lived with Applicant and his spouse for about four years. She had been a trader in Nigeria. She has permanent residency status in the U.S. and intends to pursue U.S. citizenship as soon as she is eligible. Applicant's wife has three sisters (one older and two younger) and a younger brother, all resident citizens of Nigeria. The eldest sister is a trader of clothing and cosmetics. The middle sister is a nurse who is currently unemployed after the recent birth of a child. She is married to a lawyer in private practice concentrating on labor issues. The youngest of the sisters is an administrative assistant in a college of agriculture. She is married to a property manager for a major bank in Nigeria. Applicant's brother-in-law is a student. His spouse sends her brother \$100 two or three times per year for his expenses (food, clothing). Applicant has contact with his spouse's sisters about once a year at New Year's. She is in contact with her siblings two or three times a year by telephone. They have never visited her in the U.S.

Applicant has a stepbrother who is a U.S. resident citizen. Applicant sponsored his immigration.

Applicant's work performance has consistently been rated as "exceeds requirements." Management has found him to be an "extremely hardworking, dedicated, and driven employee with great capacity for taking on multiple tasks." As a systems engineer II in 2005, Applicant handled classified information daily while on temporary duty conducting and analyzing flight tests. In about 2006, Applicant was promoted to senior systems engineer I. As of May 2007, Applicant is a control account manager for his employer, responsible for managing a program budget of more than \$26 million as well as the schedule. He has about seven direct reports with whom he has daily contact. Applicant is also required to meet with the customer once a month and these meetings are sometimes classified. Applicant works in a controlled access area secured by lock and entry logs. He has never violated security regulations.

Applicant has continued his educational endeavors during his employment for the defense firm. Five graduate courses away from earning his master's in electrical engineering, Applicant started a program toward a master's degree in engineering management. He expects to graduate from that program in summer 2008.

Nigeria is a member of several international organizations, including the United Nations. The most populous nation in Africa, Nigeria has experienced periods of political instability, with conflict along ethnic and geographic lines and dominated by military coups, since gaining its independence from Britain in 1960. Following sixteen years of military rule, Nigeria transitioned in May 1999 to a civilian, democratic form of government, led by President Olusegun Obasanjo, who was still in office as of May 8, 2007.<sup>3</sup> Soon after his election, President Obasanjo retired hundreds of military officers who held political positions and established a blue-ribbon panel to investigate human rights violations. As of the end of 2005, Nigeria continued to have a poor human rights record and government officials at all levels continued to commit serious abuses. Yet, the U.S. State Department also reports that most civil society leaders and most Nigerians have seen a marked improvement in human rights and democratic practice under the Obasanjo-led government.

Nigeria continues to experience localized civil unrest and communal (inter ethnic) violence. In the oil-producing region of the Niger River Delta, resident U.S. citizens and other foreigners have frequently been threatened and held hostage during labor disputes. Due to a significant deterioration in the security situation in that region over the past year, and because of crime throughout the country, the U.S. State Department in January 2007 warned U.S. citizens of the dangers of travel to and within Nigeria.

Since it gained independence, Nigerian foreign policy has been focused on Africa and the goals of African unity and independence, peaceful settlement of disputes, nonalignment and non intentional interference in the internal affairs of other nations, and regional economic cooperation

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<sup>3</sup>The State Department recently reported in a *Background Note: Nigeria*, dated June 2007, that presidential and legislative elections were held in Nigeria on April 21, 2007, and that President Obasanjo stepped down on May 29, 2007. The current president is Musu Umaru Yar'adua, a moderate and a respected governor from the northern state of Katsina, who pledged publicly to make electoral reform, peace and security in the Niger Delta, and continued electoral reform his top priorities.



and development. Over the past decade, Nigeria has played a pivotal role in support of peace in Africa, providing the bulk of the troops for UN peacekeeping efforts in the region.

The U.S.-Nigerian bilateral relationship has continued to improve since the inauguration of the Obasanjo-led government. The U.S. is Nigeria's largest trading partner after the United Kingdom. Nigeria lent strong diplomatic support to U.S. counterterrorism efforts in the aftermath of the September 11, 2001, terrorist attacks, condemning the attacks and supporting military action against the Taliban and Al Qaida. Nigeria has been a leader in forging an antiterrorism consensus among states in Sub-Saharan Africa. President Obasanjo maintained good relations with the Clinton and Bush administrations. The respective leaders have received each other several times since 1999.

## POLICIES

"[N]o 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 occupy a position . . . that will give that person access to such information." *Id.* at 527. The President authorized the Secretary of Defense or his designee to grant applicants 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). 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 revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

### **Guideline C—Foreign Preference**

*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 be prone to provide information or make decisions that are harmful to the interests of the United States.* (AG ¶ 9). A native of Nigeria, Applicant came to the U.S. in 1989. In 1993, he enlisted in the U.S. Army where he served with distinction. With the help of the military, he became a U.S. citizen in October 1996. In December 1997, he returned to Nigeria to marry his current wife, entering on his U.S. passport. In 2002, he again went to the Nigerian Consulate and obtained a visa so that he could travel to Nigeria on his U.S. passport. During that trip to Nigeria in September 2002, Applicant renewed his Nigerian passport for ease of entry to Nigeria. He traveled to Nigeria in 2003, 2005, and 2006, presenting both his U.S. and Nigerian passports.

Although for convenience and not intended as an act in preference for Nigeria, his voluntary acquisition of a Nigerian passport in 2002 is the exercise of a privilege of his Nigerian citizenship after becoming a U.S. citizen, and it raises foreign preference concerns under AG ¶ 10 (a)(1)(*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport*).<sup>4</sup>

On February 5, 2007, after receiving the SOR, Applicant consulted with his employer's FSO, who shredded the passport in his presence. Mitigating condition ¶ 11(e)(*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) applies. Any concerns that the DoD may have had of Applicant reapplying for that foreign passport have been amply addressed by his letter of March 15, 2007, to the Nigerian Embassy, expressing his intent to revoke his Nigerian citizenship. Willingness to renounce dual citizenship is mitigating under ¶ 11(b)(*the individual has expressed a willingness to renounce dual citizenship*). While there is no evidence as of May 2007 that his citizenship has been officially revoked, Applicant has done what he can to comply with DoD requirements. His destruction of his foreign passport is consistent with his U.S. citizenship and telling of his preference for the U.S.

#### **Guideline B—Foreign Influence**

*Foreign contacts and interests may be a security concern if the individual has divided loyalties, or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as to whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. (AG ¶ 6). It is undisputed that Applicant has foreign connections that present a potential risk of divided loyalties. Applicant's mother, siblings, and his spouse's siblings are resident citizens of Nigeria.<sup>5</sup> His mother-in-law, a U.S. permanent resident with Nigerian citizenship, has lived with him and his spouse for the past four years. The salient issue is whether these foreign contacts present a heightened risk (see ¶ 7(a) *contact 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 ¶ 7(d) sharing 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 and strength of the family ties, the country involved, and the occupations, activities, and/or associations of the foreign family members are all relevant in assessing whether there is a heightened risk.*

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<sup>4</sup>As of the issuance of the SOR, Applicant had a valid Nigerian passport that was scheduled to expire on September 4, 2007.

<sup>5</sup>The DOHA Appeal Board has held it reasonable for the administrative judge to consider the significance not only of an applicant's ties, but also of his spouse's ties to a foreign country, and the possible effect they may have on Applicant's contacts under Guideline B (see ISCR Case No. 01-02452, App. Bd. Nov. 21, 2002).

Although Applicant's mother-in-law is subject to Nigerian laws and obligations because of her Nigerian citizenship, she enjoys the protections of her U.S. legal residency and she does not intend to return to Nigeria. Concerning the family members within the physical reach of the Nigerian authorities, Applicant speaks with his mother by telephone quarterly, and with his siblings even less (about twice yearly). Despite the relatively infrequent contact, it is evident he feels some affection or familial bond to them. He sends his mother monetary gifts, primarily over the Christmas/New Year's holidays, and visited his mother and siblings when in Nigeria. He returned to Nigeria on his father's death, and out of concern for his mother's health in 2005 and 2006. Two or three times yearly, Applicant's spouse telephones her siblings and she sends her brother \$100 with that same frequency. The nature and extent of their contacts with relatives in Nigeria are what one might reasonably expect of any immigrants with parents or siblings living in a distant country.

His siblings' government employments create a somewhat heightened risk, although there is nothing about their professions that suggests military, security, or intelligence responsibilities. His sisters who are nurses have reached the pinnacles of their careers in Nigeria. Both chief nursing officers, the elder is affiliated with a government-run university teaching hospital, the other is on the staff of the state school of nursing under the Ministry of Health. His elder brother is a lawyer presently serving as a deputy director in the main office of the Nigerian agency with oversight over securities markets. Yet, given the friendly relations between Nigeria and the U.S. since Nigeria's transition to civilian rule in 1999, Applicant is not likely to find himself in a position of having to choose between the interests of his siblings in Nigeria and the U.S. (*see ¶ 8(a) the nature of the relationships with the 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.*). Despite some ongoing human rights abuses and persistent ethnic conflicts in some regions, there has been significant improvement in human rights since Nigeria transitioned to civilian rule in 1999. Nigeria is not known to target U.S. citizens to obtain protected information or to sponsor terrorism. To the contrary, Nigeria lent strong diplomatic support to U.S. counterterrorism efforts in the aftermath of the September 11, 2001, terrorist attacks, condemning the attacks and supporting military action against the Taliban and Al Qaida. Nigeria has also been a leader in forging an antiterrorism consensus among states in Sub-Saharan Africa. To the extent that Al Qaida has publicly expressed interest in overthrowing the government of Nigeria, Nigeria is a target, as is the U.S., of such terrorism and not a state-sponsor of terrorism. The U.S. is Nigeria's second largest trading partner, and Nigeria is not likely to jeopardize these interests by pressuring its law-abiding citizens.

In the event that Applicant found himself in a position of being forced to choose between the interests of his family members in Nigeria and the interests of the U.S., Applicant has persuaded me that he can be expected to resolve those interests in favor of the U.S. where he and his spouse have chosen to pursue their careers and raise their children. Applicant came to the U.S. as a tourist in 1989, but married a U.S. citizen only six months later. When the relationship soured, Applicant did not rejoin his family in Nigeria. Instead, he joined the U.S. Army, taking an oath to defend this country when he was not yet a U.S. citizen. It gave him a sense of belonging and the opportunity to gain U.S. citizenship, a source of pride and joy for him (Tr. 106). Having progressed from private (E1) to sergeant (E5), he left the Army at the end of his four-year enlistment to pursue his education and then a career in the defense sector while raising a family. Largely because of these opportunities, he has a strong sense of loyalty to the U.S., as shown by his testimony:

My loyalty, my choice will always remain that of the United States, Your Honor, because of what this country stands for. I am here today because of the freedom, the due process, the rule of law. This wasn't in any other country. I'll get a letter in the mail saying your clearance is cancelled. It brings tears to my eyes, Your Honor, because this is the only country in the world. I came here with nothing. And I've been in this country, I pay my taxes, I've done everything a citizen ought to do. And I respect what this country stands for. My children are here today as a first-generation American, and I see myself as the immigrants who came here through Ellis Island or through the Mayflower or through whatever means.

I'm the first person and I thank God for what this country made me become. I grew up here. I learned the ways. I went to school here. And I would absolutely never take security and the defense of this country lightly. It is far greater than any individual. It's greater than my parents. It's greater than my children. I put my life, Your Honor, for four years on the line to defend this country, what it stand [sic] for. (Tr. 107-08)

Applicant continues to feel a sense of pride in contributing to the national defense through his work with the defense contractor. (Tr. 110) He and his spouse have established firm roots in the U.S., even bringing her mother from Nigeria to live permanently in the U.S. Their financial assets (home, savings, retirement assets, job income) are all in the U.S. Neither Applicant nor his spouse has any intent to return to Nigeria permanently, as evidenced by their surrender/destruction of their Nigerian passports and notification to Nigerian officials of their intent to renounce Nigerian citizenship. Applicant testified convincingly to having made the choice to become a U.S. citizen, to live and die here ("I tell my wife, if I die tomorrow, bury me here because I want the flag draped over my coffin."). Applicant satisfies MC ¶ 8(b)(*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest*).

### **Whole Person Concept**

*The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. (AG ¶ 2(a)).* Applicant's voluntary exercise of his Nigerian citizenship after he had acquired U.S. citizenship would ordinarily raise very serious concern about whether he can be counted on to serve U.S. interests (¶ 2(a)(1), *the nature, extent, and seriousness of the conduct*). However, his motive was for convenience, to avoid the hassles of obtaining a visa for travel to Nigeria on his U.S. passport (¶ 2(a)(7), *the motivation for the conduct*) and not intended as an act of foreign preference, and he has demonstrated reform in complying with DoD requirements to surrender, destroy, or otherwise invalidate his Nigerian passport (¶ 2(a)(6), *the presence or absence of rehabilitation and other pertinent behavioral changes*). He has significant ties to Nigeria in the close bonds shared with his mother and four siblings, but these are overwhelmed by his strong ties to the U.S. established since 1989 (continuous residency, citizenship, military service, financial assets, education, dedicated work for a defense contractor). He has shown he can be counted on to fulfill his fiduciary obligations to the United States, having handled classified information appropriately in the performance of his duties.

## **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

## **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Elizabeth M. Matchinski  
Administrative Judge