

On August 3, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on August 10, 2006, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 8, 2006. A notice of hearing was issued on September 22, 2006, scheduling the hearing for October 30, 2006. At the hearing the Government presented six exhibits. The Applicant presented ten exhibits and testified on his own behalf. The record was left open to allow the Applicant to submit additional documentation. The Applicant submitted one Post-Hearing Exhibit consisting of four pages. The official transcript (Tr.) was received on November 13, 2006.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying “the application of Guideline C to cases involving an Applicant’s possession or use of a foreign passport.” The Applicant received a copy of this memorandum with the SOR. (Government Exhibit 2).

On December 29, 2006, the Administrative Judge issued a favorable decision in this case. The Appeal Board remanded the favorable decision of the Administrative Judge on July 24, 2007, instructing the Judge to issue a new opinion that “should include a more detailed analysis under both Guideline B and the “whole person,” which explicitly takes into account the situation existing in Nigeria insofar as it has a bearing on Applicant’s eligibility to hold a clearance. Further, it should, as appropriate, detail and explain Applicant’s pertinent qualities, characteristics, and circumstances which are the basis for the Judge’s ultimate decision.” (ISCR Case No. 06-17001 at 2 (App.Bd. Jul. 24, 2007).)

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 25 years of age and holds a Bachelors Degree in Computer Science. He is employed as a Software Engineer. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant was a dual citizen of Nigeria and the United States. He was born in Lagos, Nigeria in 1981. His mother won the lottery for a green card under the Diversity Program sponsored by the United States Immigration and Naturalization Service. The green card entitled his mother, her spouse and each of her children under the age of twenty-one to receive permanent residence visas in the United States if they so chose. The visas will expire in 2008. The Applicant took advantage

of his visa and moved to the United States in May 1998, at the age of sixteen. He became a United States citizen on February 11, 2005. He currently possesses a United States passport that will expire in 2010.

On August 15, 2005, when the Applicant was interviewed by an investigator from the Defense Security Service, he stated that he also possessed a Nigerian passport that was issued on September 13, 2000, and was renewed in about May 2004. This passport was scheduled to expire in September 11, 2010. The Applicant had planned to use his Nigerian passport in order to travel to Nigeria to visit family members there. Since moving to the United States in 1998, the Applicant has traveled to Nigeria on one occasion. When he did, he used both his United States passport and his Nigerian passport to enter and exit the country.

The Applicant believes that he renounced his Nigerian citizenship when he took the oath to become a United States citizen. (Tr. p. 56). However, after learning of the provisions of the Money Memorandum, he went a step further and renounced his Nigerian citizenship and surrendered his Nigerian passport by making a formal request by letter to the passport office at the Federal Ministry of Internal Affairs in Nigeria on October 12, 2006. (Applicant's Exhibit A).

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's mother, father, and a brother are all citizens and residents of Nigeria. His parents and sisters all hold United States permanent resident alien status cards that will expire in 2008. His eldest brother, an accountant for a private bank in Nigeria, and who was over the age of twenty-one at the time of the green card lottery, did not get a permanent resident alien status card, and will remain in Nigeria. The Applicant's parents are planning to move to the United States before 2008. The Applicant contacts his parents in Nigeria about once or twice a month and on holidays. (Tr. p. 49). He has little or no contact with his eldest brother.

The Applicant's father is a retired civil servant, an administrative clerk, who worked for the Ministry of Defense in Nigeria over ten years ago. (Applicant's Exhibit F). Prior to that, he worked in the Office of the Head of the Civil Service of the Federation, the Ministry of Finance, and the Ministry of Labor and Productivity. Since retiring from government service, he has had no contact with the Nigerian government. His father receives a small pension, about \$100.00 a month, from the Nigerian government, however, it is the money from his mother's business that provides most of their financial support. (Applicant's Exhibit D and E). The Applicant's father resides far away from the region in Nigeria that involves conflict and unrest and he does not travel there. His father lives in an area of Nigeria which is known as a safe place, close to the American consulate, and where 99% of the American people in Nigeria live.

The Applicant's mother is a travel agent and owns her own business. (Applicant's Exhibit B and C). Both of his sisters have already moved to the United States and made it their permanent home. One of them is an accountant, the other is a student currently in the process of applying to graduate school. One of his sisters is already a United States citizen.

The Applicant's parents own the house that they live in. Under Nigerian law, when they move to the United States, the Applicant's eldest brother will inherit the property. The Applicant has no foreign financial interests what so ever and has no intentions of ever moving or living in Nigeria.

I have taken administrative notice of the current political conditions in Nigeria. The fact that Nigeria is a federal republic composed of 36 states, which has a very poor human rights record. Human rights violations include police brutality, armed robberies and murders to name a few. I have considered the fact that Nigerian Government officials at all levels commit serious abuses. The fact that Nigeria has terrorists activities, presents potential danger to Americans who travel there, and is rampant with crime and instability. The overall deteriorating security situation in Nigeria, the human rights abuses and the government corruption elevates the cause for concern in the case.

The Applicant has discussed the fact that he is applying for a security clearance with his parents and the situation of potential duress. He told them that if he were ever approached by a foreign power of any sort and asked to reveal classified information, he would not reveal it under any circumstances.

Mitigation.

Letters from the Applicant's father confirms his past employment with the Nigerian government. (See Applicant's Exhibits G and H).

Letters from the Applicant's Supervisor, his Manager, and the Facility Security Officer collectively indicate that the Applicant is highly regarded for his intelligence, motivation, and integrity. He is a strong team player and has been promoted as a result of his outstanding work performance. He is also an individual with high moral standards. He is considered trustworthy, very responsible and extremely conscientious about his work. (Applicant's Exhibit J).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

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.

Conditions that could raise a security concern:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns:

1. Dual citizenship is based solely on parent's citizenship or birth in a foreign country;
4. Individual has expressed a willingness to renounce dual citizenship

Foreign Influence

A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Condition that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

Conditions that could mitigate security concerns:

1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between the loyalty of the person(s) involved and the United States.

3. Contact and correspondence with foreign citizens are casual and infrequent.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances

- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct

- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "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. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference) and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant

can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The Applicant was a dual citizen of Nigeria and the United States who possessed a Nigerian passport. Disqualifying Conditions, (1) *The exercise of dual citizenship* and (2) *Possession and/or use of a foreign passport* apply. However, Mitigating Conditions (1) *Dual citizenship is based solely on parent's citizenship or birth in a foreign country* and (4) *Individual has expressed a willingness to renounce dual citizenship* are applicable.

Since learning that possession of a foreign passport is not permitted when holding a security clearance, in compliance with the provisions of the Money Memorandum, he surrendered his foreign passport to the Nigerian authorities. He has also renounced his Nigerian citizenship. Under the circumstances, the Applicant has done everything possible to be in compliance with the requirements of the directive and the Money Memorandum. Accordingly, he has clearly demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find for the Applicant under Guideline C.

With respect to Guideline B, the overall deteriorating security situation in Nigeria, the human rights abuses and the government corruption in Nigeria certainly elevates the cause for concern in the case. However, under the particular facts of this case, the evidence establishes that the Applicant is not vulnerable to foreign influence. With the luck of the draw, through a green card lottery, sponsored by the Immigration and Naturalization service, the Applicant and his immediate family, including his mother, father, and two sisters won a Diversity Visa, issued only to those who qualify as productive members of society, and were given the privilege of entering the United States on a temporary visa with the ability to obtain a permanent one. The Applicant's mother, father and sisters all have permanent visas. Both of his sisters already reside in the United States. One of his sisters is already a United States citizen. The other sister plans on becoming one as soon as she is able. His parents are planning to permanently move to the United States before 2008. The Applicant and his family hold the privilege of immigrating to the United States in high esteem and would do nothing to jeopardize it.

I have also considered the "whole person concept" in evaluating whether the Applicant meets the qualifications for access to classified information. The Applicant's qualities, characteristics and circumstances have been considered. The Applicant came to the United States at the age of sixteen and was the first in his family to make the United States his permanent home. Since coming to the United States, the Applicant has been extremely productive. He has achieved his college degree by getting student loans from the United States that he is currently paying back. He has established a

professional career working for a defense contractor in defending this country and in an effort to give back to the United States for the privileges it has provided him. He has excelled in accomplishing the American dream. Among other accomplishments, he was invited to participate in an academic excellence program for outstanding students. He has demonstrated his loyalty and commitment to the United States. He has expressed strong positive feelings toward the United States and is grateful for the opportunities that he has found both through his ability to obtain higher education and in his professional development. He is well respected by his superiors and professional colleagues. The Applicant is a credible, intelligent, and forthright young man. Most importantly, he understands his responsibilities to the United States when holding a security clearance and will never under any circumstances improperly divulge classified information. The current political conditions in Nigeria, although horrible, do not adversely affected the Applicant's eligibility for access to classified information.

Under Guideline B, Disqualifying Condition (1) *an immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country* applies. However, Mitigating Conditions (1) *A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between the loyalty of the person(s) involved and the United States* and (3) *Contact and correspondence with foreign citizens are casual and infrequent* are applicable. The Applicant's two sisters have already moved to the United States. One has already become a United States citizen. The other will apply to be one as soon as she is eligible. The Applicant's parents are planning to move to the United States in the very near future. His only family member who will remain in Nigeria is his brother. The Applicant has little or not contact with him.

Although the Applicant's father was at one time employed with the Nigerian Government, he is now retired and has been for over ten years. His small pension from the Nigerian Government provides little in the way of financial support. In fact, the Applicant's father is planning to move to the United States to make it his permanent home. The Applicant's father is no longer associated with the Nigerian government, or is he in a position to place foreign influence on the Applicant, or in a position to be exploited by the Nigerian Government in a way that could force the Applicant to choose between loyalty to him and loyalty to the United States. Except for his brother who will remain in Nigeria, the Applicant has for the most part cut all ties with Nigeria. The Applicant understands his responsibility to the United States in holding a security clearance. Based on the foregoing, the Applicant's relatives do not raise a security concern and Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline C and B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines C and B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant
1.b.: For the Applicant
1.c.: For the Applicant

Paragraph 2: For the Applicant.

Subparas. 2.a.: For the Applicant
Subparas. 2.b.: For the Applicant
Subparas. 2.c.: For the Applicant

DECISION

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

Darlene Lokey Anderson
Administrative Judge