

KEYWORD: Foreign Influence

DIGEST: The government’s evidence failed to establish that Applicant was at heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of her limited family connections to Nigeria. Clearance granted.

CASENO: 06-20559.h1

DATE: 07/31/2007

DATE: July 31, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 06-20559
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
JOHN GRATTAN METZ, JR**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____The government's evidence failed to establish that Applicant was at heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of her limited family connections to Nigeria. Clearance granted.

STATEMENT OF THE CASE

Applicant challenges the 23 April 2007 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance because of unresolved foreign influence concerns.¹ She answered the SOR in an undated answer, received by DOHA 10 May 2007, and requested a hearing. DOHA assigned the case to me 11 June 2007 and I convened a hearing 12 July 2007. DOHA received the transcript (Tr.) 20 July 2007.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR, except for denying that she had a Nigerian boyfriend (SOR, 1.d.) and correcting her dates of travel to Nigeria (SOR 1.f.). Accordingly, I incorporate those admissions as findings of fact. She is a 27-year-old software developer for a defense contractor, and seeks access to classified information. She previously had a confidential clearance when she worked in support of the Drug Enforcement Administration in August 2003. During the pendency of this clearance application, she held an interim secret clearance without incident from July 2005 until the SOR was issued in April 2007.

Applicant's parents were Nigerian citizens attending college in the U.S. in the mid-1970s when her brother (September 1972) and sister (October 1976) were born. After receiving their undergraduate degrees, they remained in the U.S. while Applicant's father completed his master's degree, then returned to Nigeria. However, they were so taken with life in the U.S. that they returned to the U.S. for the birth of Applicant (January 1980) and her younger sister (October 1985). All her siblings now live in the U.S., as do her parents. Her brother served in the U.S. military, and her sister is employed with the federal government and holds a top secret/special compartmented information clearance.

Applicant's father worked for the Nigerian central bank (the Nigerian equivalent of the U.S. Federal Reserve Bank) as a director of banking operations until the late 1990s, when he retired. He received a lump sum retirement payment from the central bank when he retired. Applicant's mother worked as a geo-scientist for a major U.S. oil company until she took early retirement in the mid-1990s, from which she receives a small company pension. Applicant's mother became a naturalized U.S. citizen in March 2006. Applicant's father is a legal permanent resident (LPR) of the U.S., and intends to apply for his U.S. citizenship as soon as he is eligible. Applicant's parents reside with one of her sisters when they are in the U.S., but currently reside about half the year in Nigeria because of the health and medical needs of Applicant's 95-year-old grandmother.

¹Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992—as amended and modified, most recently in August 2006 (Directive).

Applicant traveled to the U.S. in December 1995—during her senior year in high school—to look at colleges. She returned to Nigeria and completed high school in June 1996, when she came to the U.S. to attend college and live in the U.S. permanently as a U.S. citizen. Since arriving in the U.S. to stay, she has been continually employed, either full- or part-time. She attended a local community college from January 1997 to May 1999, when she transferred to a major U.S. university. She obtained her undergraduate degree in computer science in December 2002. Applicant has significant financial assets in the U.S., none in Nigeria. She bought a \$340,000 condominium in July 2005, putting more than \$37,000 down. In January 2007, she accepted a position with a new employer paying her \$85,000 per year.

Applicant traveled to Nigeria in 2000 to visit her family. She also traveled to Nigeria in 2003 as the maid-of-honor for her sister, who decided to have a destination wedding in Nigeria. For both trips, she was required to obtain a tourist visa from the Nigerian Embassy to enter Nigeria (G.E. 2). Applicant's aunts, uncles, and cousins are all citizens and residents of Nigeria. She did not have that much contact with them when she lived in Nigeria, and has had no contact with them since she moved to the U.S., except for brief contact on her two return trips to Nigeria.

Nigeria—a part of the British Empire first as a sphere of British influence in 1885, then as a colony and protectorate in 1914—was granted independence from the United Kingdom in October 1960. Since independence, the government has experienced multiple periods of political unrest, including military takeovers of the government. However, the military has generally ceded power back to civilian government, most recently in May 1999. Although Nigeria has a poor human rights record, it has been a staunch supporter of the U.S. global war on terrorism. Furthermore, since independence Nigerian foreign policy has been characterized by a focus on Africa and adherence to several fundamental principles: African unity and independence; peaceful settlement of disputes; nonalignment and nonintentional interference in the internal affairs of other nations; and regional economic cooperation and development. Nigeria is the largest U.S. trading partner in sub-Saharan Africa, and the U.S. is second only to the United Kingdom in trade with Nigeria. The U.S. is the largest foreign investor in Nigeria. Nigeria is not a known collector of U.S. intelligence or sensitive economic information. Nigeria is not known to target U.S. citizens to obtain protected information. The U.S. Department of State characterizes the foreign relations between the U.S. and Nigeria as excellent.

One of Applicant's former supervisors testified how extremely trustworthy he found her over the more-than-three years he supervised her, a sentiment that was echoed in her character references from other employers (A.E. D). In addition, she has never had a security violation.

POLICIES AND BURDENS

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they

represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.²

CONCLUSIONS

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.³ Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk or foreign exploitation, inducement, manipulation, pressure, or coercion.⁴

In this case, the government failed to establish a case for disqualification under Guideline B. Considering the country side of the equation first, Nigeria and the U.S. enjoy excellent foreign relations. However, while Nigeria focuses its foreign policy largely in the region, it has actively cooperated with the U.S. in ending global terrorism. Nigeria is not known to target protected U.S. information, nor is it known to target U.S. citizens to obtain protected information. Further, in this

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³Revised Adjudicative Guidelines, ¶ 6.

⁴Revised Adjudicative Guidelines, ¶ 7.(a).

case it is not clear what claim Nigeria might have on Applicant. There is no evidence that she was considered to be a Nigerian citizen, and indeed, she had to apply to the Nigerian government for a tourist visa to travel to Nigeria. The risk that Nigeria might seek protected information from Applicant is low, if not non-existent.

On the Applicant side of the equation, the government produced no evidence that there was any risk, much less a heightened risk, of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's limited family contacts in Nigeria. Applicant was born a U.S. citizen, and although she resided with her parents in Nigeria until she finished high school, her first important decision as an adult was to move to the U.S. permanently. Her financial and family connections are all in the U.S.: her siblings (and her nephews) all live in the U.S. All are U.S. citizens. Her mother is a U.S. citizen; her father is an LPR of the U.S. on track for U.S. citizenship. They reside in the U.S. permanently, except when in Nigeria caring for Applicant's 95-year-old grandmother. There is nothing in the circumstances of their being in Nigeria, or in Applicant's contacts with her parents and grandmother, to heighten the risk that she could be impelled to provide protected information to Nigeria. I resolve Guideline B for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph a:	For Applicant
Subparagraph b:	For Applicant
Subparagraph c:	For Applicant
Subparagraph d:	For Applicant
Subparagraph e:	For Applicant
Subparagraph f:	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 granted.

John G. Metz, Jr.
Administrative Judge