

KEYWORD: Foreign Influence

DIGEST: Applicant is a 35-year-old man who immigrated to the U.S. from Nigeria at the age of 17. Since his arrival in the U.S., he has earned a bachelor's degree in computer science, obtained U.S. citizenship, married, and had four children from two U.S. citizen spouses. Although he has family ties or connections to Nigeria, his significant contacts and ties are to the U.S. Applicant has mitigated any potential foreign influence security concern. Clearance is granted.

CASENO: 06-22034.h1

DATE: 09/14/2007

DATE: September 14, 2007

In re:)	
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-----)	ISCR Case No. 06-22034
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MICHAEL H. LEONARD**

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 35-year-old man who immigrated to the U.S. from Nigeria at the age of 17. Since his arrival in the U.S., he has earned a bachelor's degree in computer science, obtained U.S. citizenship, married, and had four children from two U.S. citizen spouses. Although he has family ties or connections to Nigeria, his significant contacts and ties are to the U.S. Applicant has mitigated any potential foreign influence security concern. Clearance is granted.

STATEMENT OF THE CASE

Applicant contests the Defense Department's intent to deny or revoke his eligibility for a security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on March 15, 2007. The SOR—which is equivalent to an administrative complaint—details the factual basis for the action and alleges a security concern under Guideline B for foreign influence based on Applicant's ties or connections to Nigeria.

In addition to the Directive, this case is brought under the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines) approved by the President on December 29, 2005. The Revised Guidelines were then modified by the Defense Department, effective September 1, 2006. They supersede or replace the guidelines published in Enclosure 2 to the Directive. They apply to all adjudications and other determinations where an SOR has been issued on September 1, 2006, or thereafter.² The Directive is pending revision or amendment. The Revised Guidelines apply here because the SOR is dated after the effective date.

On April 17, 2007, Applicant replied to the SOR and requested a hearing. The hearing took place as scheduled on August 14, 2007, and the transcript was received on September 4, 2007. The transcript reflects an incorrect case number.

FINDINGS OF FACT

Under Guideline B, the SOR alleges that Applicant may be subject to foreign influence due to his ties or connections to Nigeria. Applicant admits the factual allegations in SOR subparagraphs 1.a–1.f. In addition, the following facts are established.

Applicant is a 35-year-old senior information specialist (a software developer) who was born in Nigeria in 1972. He arrived in the U.S. in 1989, and he became a naturalized U.S. citizen in 1996. He is a first-time applicant for a security clearance.

¹ Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).

² See Memorandum from the Under Secretary of Defense for Intelligence, dated August 30, 2006, Subject: Implementation of Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 29, 2005).

He completed his secondary education in Nigeria in about May 1989. He then joined his parents in Cairo, Egypt, where they were living due to his father's military assignment with the Nigerian Army. A few months later, his parents sent Applicant to the U.S. for a vacation as a reward for doing well in school. He arrived in the U.S. in September 1989 and stayed with relatives. At the time, the universities in Nigeria were closed for an indefinite period due to student protests against the current government. At his relatives' suggestion, and with his parents' permission, Applicant decided to pursue his college education in the U.S.

About two years after his arrival, he registered with the U.S. Selective Service System (Exhibit J). He was awarded a bachelor of science in computer science in 1994 (Exhibit B). In doing so, he earned honors in basic studies and computer science. In addition, he minored in the subjects of business administration and mathematics.

He met and married his first wife while in college. She is a native-born U.S. citizen. They married in 1990, separated in 1992, and divorced in 1995. They have two children, a 15-year-old daughter and a 14-year-old son. The children are native-born U.S. citizens and reside here. Both children live with their mother, although they visit Applicant during summer vacation. Applicant pays child support for their benefit.

Applicant married another native-born U.S. citizen in 1998. They divorced five years later. They reunited in 2004 and married again in 2005. They have two children, a seven-year-old son and a three-year-old son. The children are native-born U.S. citizens and reside here. Next year, Applicant and his wife are expecting a third child.

Since becoming a U.S. citizen in 1996, Applicant has made three trips to Nigeria. The first trip in 1997 was to introduce his then fiancée to his family, and for her to understand his cultural heritage firsthand. The second trip in 2001 was to introduce the couple's first son to the family. The third trip in 2006 was to introduce the couple's second son to the family. For each trip, he traveled on a U.S. passport; his last Nigerian passport expired some years ago (Exhibits K, L and M). And for each trip, he registered at the U.S. Embassy or Consulate in Nigeria.

Applicant was raised in a large family. Ethnically, his family belongs to the predominately Catholic Igbo people, which is the largest ethnic group in the southeast of Nigeria (*See Exhibit 5, Source Document I at 2*). His parents, two brothers, and three sisters are citizens of and residents in Nigeria. Another two brothers are Nigerian citizens, but they live and work in the U.S. His parents are both well educated as are his several siblings.

Applicant's father served in the Nigerian Army for about 35 years before retiring in 1993 (Exhibit O). He retired at the rank of colonel and receives a pension, which he does not depend on as a sole source of income. His primary source of income is stock dividends and rent from real estate.

Applicant's mother taught in colleges operated by the Nigerian government before working at the headquarters of the Nigerian Ministry of Education (Exhibit P). She retired from the education ministry and receives a pension, which she does not depend on as a sole source of income. Her primary source of income comes from farming. She owns large hectares of palm plantations and cassava farms. Like her husband, another source of income is stock dividends.

Applicant's oldest sister is a 33-year-old senior banking officer working in the marketing and sales department for a bank in Nigeria (Exhibit Q). She is widowed and the mother of two sons, ages ten and seven. Her two sons live with her parents in order for her to focus on her job. To help his sister with her job, Applicant purchased about \$500 of shares of the bank (Exhibits 4, V, and W). The shares were purchased for him, his wife, and his two sons. Collectively, they own about 11,298 units or shares. The approximate market value of all shares is less than \$1,500 (*See* R. 95–96, 173–175).

His second sister is a 23-year-old school teacher in Nigeria (Exhibit T). She was born in the United Kingdom and holds dual citizenship with that country and Nigeria. She has a bachelor's degree in French, and she is presently working as a French teacher.

Applicant's adopted sister is also 23 years old and she lives with her parents (Exhibit U). She is preparing to sit for the entrance examination to gain admission to a university to study nursing. Applicant has not had much contact with her given their differences in age.

In addition to his three sisters, he has four brothers, two of whom live and work in Nigeria. His 30-year-old brother is an architect (Exhibit R). He is married and self-employed. He is currently running a start-up business that is involved in post-construction cleaning of residential and commercial property. Applicant's 25-year-old brother is a university graduate in the field of urban and regional planning (Exhibit S). He is not employed at the moment, but is doing some freelance photography and publishing.

Applicant's two brothers in the U.S. were both born in Nigeria and are Nigerian citizens. They are also lawful residents of the U.S. His older brother is a medical doctor who lives with his wife (also an M.D.) and a daughter in the U.S. His younger brother works as a systems administrator. He is married and has children as well. Both brothers married native-born U.S. citizens. And both brothers intend to become U.S. citizens when they are able to do so.

From time to time, Applicant has provided money to his parents. Since 1989, Applicant estimates that he has given his parents or siblings in Nigeria about \$3,000 (R. 96–98). In the past, he has sent the money via Western Union and paid high fees to do so. To avoid the high fees, Applicant established an account with a bank in Nigeria. This allows him to transfer money from the U.S. bank account to the Nigerian bank account without a fee. Due to his financial responsibilities and litigation with a former business partner, Applicant has been unable to send any more money to his parents or siblings. As of August 2007, the account balance was \$100 (Exhibit X).

Applicant has worked in his field since earning his bachelor's degree in 1994. He has worked for the same company, in different positions, since 1996. He is currently working as a senior information specialist in the modeling, simulation, and collaborative solutions group. He has a favorable work history as reflected by performance evaluations and character references (Exhibits D, E, F, Y, Z, AA, and BB). In general, his character references have high regard for Applicant's technical abilities, work performance, professionalism, and integrity. In 2001, he was awarded a United States Patent, on behalf of his employer, for a secure data storage system and method (Exhibit C).

Applicant is active in his local community. He is an active member of his church, and he is a member and officer of a local chapter of a religious fraternal benefits organization (Exhibits G and H). In addition, Applicant is involved in youth soccer as a parent and coach (Exhibits I and CC).

Administrative notice is taken of the facts about Nigeria as described in the government's request (Exhibit 5). Five of the six source documents for the request are reports by the U.S. Department of State, and the sixth is from the Congressional Research Service. The following facts about Nigeria are highlighted:

- Nigeria is a federal republic in western Africa. Since gaining independence from the British in 1960, Nigeria has experienced periods of political instability. In 1999, Nigeria returned to civilian rule after years of military rule.
- The Nigerian government's record on human rights is poor.
- Violent crime, committed by ordinary criminals as well as by persons in police and military uniforms, can occur throughout the country. Kidnaping for ransom of persons associated with the petroleum sector, including U.S. citizens, remains common in the Niger Delta region.
- A travel warning issued in January 2007 warns U.S. citizens of the dangers of travel to Nigeria and of further deterioration of the security situation in the Niger Delta region. The travel warning also notes that al Qaeda leadership has expressed an interest in overthrowing the Nigeria government.

None of Applicant's family members work for or are associated with the petroleum industry in the Niger Delta region. Likewise, none of his family members are native to the Niger Delta region, and they do not live there.

GENERAL PRINCIPLES OF LAW AND POLICIES

No one has a right to a security clearance.³ As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁴ A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁵ An unfavorable decision: (1) denies any application; (2) revokes any existing security clearance; and (3) prevents access to classified information at any level and retention of any existing

³ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) ("It is likewise plain that there is no 'right' to a security clearance, so that full-scale due process standards do not apply to cases such as Duane's.").

⁴ *Egan*, 484 U.S. at 531.

⁵ Directive, ¶ 3.2.

security clearance.⁶ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁷ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁰ In *Egan*, the Supreme Court said that the burden of proof is less than the preponderance of the evidence.¹¹ The agency appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹²

The Revised Guidelines set forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based upon consideration of all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept. A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.¹³ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting eligibility for a security clearance.

CONCLUSIONS

Under Guideline B for foreign influence,¹⁴ a security concern may arise due to foreign contacts and interests "if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that

⁶ Directive, ¶ 3.2.

⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁸ Directive, Enclosure 3, ¶ E3.1.14.

⁹ Directive, Enclosure 3, ¶ E3.1.15.

¹⁰ Directive, Enclosure 3, ¶ E3.1.15.

¹¹ *Egan*, 484 U.S. at 531.

¹² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹³ Executive Order 10865, § 7.

¹⁴ Revised Guidelines at 5–6 (setting forth the disqualifying and mitigating conditions).

is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest.”¹⁵ The most pertinent condition that could raise a security concern and may be disqualifying in this case is the first disqualifying condition:

[C]ontact with a foreign family member, business, or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.¹⁶

Of course, the mere possession of close family ties with a person in a foreign country is not—as a matter of law—disqualifying under Guideline B. But if only one relative lives in a foreign country and an applicant has contact with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.¹⁷

Here, Applicant comes from a large and close family, most of whom live in Nigeria. He has regular contacts and close relationships with his parents and nearly all his siblings. These circumstances create the potential for a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because his relationships are sufficiently close to raise a concern about his understandable desire to help his parents and siblings in Nigeria.

The other DCs under Guideline B have been considered and none apply. In particular, the fifth DC¹⁸ concerning foreign-financial interests was considered in light of Applicant’s Nigerian stock holdings and bank account, but it does not apply. His stock holdings are minor (less than \$1,500) and the bank account was set up as a convenience. Combined, they do not amount to “substantial” foreign-financial interests. These circumstances are relevant, however, because they indicate the strength of his family ties.

Three of the six mitigating conditions¹⁹ under the guideline may apply to the facts and circumstances of this case:

MC 1. [T]he nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

MC 2. [T]here 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

¹⁵ Revised Guidelines at 5.

¹⁶ Revised Guidelines at 5.

¹⁷ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

¹⁸ DC 5 is “a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.”

¹⁹ Revised Guidelines at 6.

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; and

MC 3. [C]ontact or communications with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

The first and third MC do not apply because Applicant's relationships with his parents and siblings are of sufficient magnitude or strength to negate these two MCs. He has regular contact with his parents and has traveled to Nigeria for family visits. There is at least a remote or slight possibility that unsavory elements in Nigeria could attempt to use his family members to coerce or pressure Applicant.

But Applicant did establish that the second MC applies in his favor. The record evidence supports a conclusion that Applicant has a depth of loyalty to the U.S., so that he can be expected to resolve any conflict in favor of the U.S. interest. The same can be said for his longstanding relationships in the U.S. He has lived in the U.S. since 1989—arriving here when he was 17 years old—more than half of his life and all of his adult life. He obtained his college education in the U.S., married U.S. citizens, and has four native-born U.S. citizen children. He has been a U.S. citizen since 1996. His professional career is in the U.S., as are his financial and other interests. The Nigerian stock and bank account are of minor value. His contacts and travel to Nigeria are not motivated by political or financial interests, but by his sense of family.

Although the second MC is the only applicable mitigating condition, the analysis does not necessarily end as other facts and circumstances may mitigate the security concern under the whole-person concept. First, in the post-9/11 world, the risk of terrorism and foreign influence can never be ruled out, but the likelihood in Applicant's case is remote. That conclusion is supported by the fact that his family does not live in the Niger Delta region, which is the area of Nigeria of most concern according to the State Department's travel warning. Second, Applicant can fairly be described as a model immigrant. He complied with U.S. law by registering with the Selective Service in 1991, he earned a college degree in 1994, and he obtained U.S. citizenship in 1996. His spouse, children, professional career, and financial interests are in the U.S., and that situation is unlikely to change. And he is active in his community and church. He appears to be a well-established, law-abiding citizen whose interests are closely aligned with the U.S. These are examples of ties that bind most members of a participatory democracy such as the U.S. Third, this is not a case of "divided loyalties"²⁰ with an applicant who has one foot in the U.S. and one foot in his native country. On the contrary, the evidence shows Applicant has both feet firmly planted in the U.S. and that his significant contacts and ties are to the U.S. Given all these circumstances, the record evidence supports a conclusion that Applicant can be expected to resolve any potential foreign influence or pressure by either coercive or non-coercive means in favor of the U.S. interest.

To conclude, after weighing the record evidence as a whole, Applicant has explained, extenuated, or mitigated the foreign influence security concern. And Applicant has overcome the

²⁰ Revised Guidelines at 5.

case against him and satisfied his ultimate burden of persuasion to obtain a favorable clearance decision. Accordingly, Guideline B is decided for Applicant.

FORMAL FINDINGS

_____ SOR ¶ 1–Guideline B: For Applicant

Subparagraphs a–f: For Applicant

DECISION _____

_____ In light of all the circumstances, it is clearly consistent with the national interest to grant or continue eligibility for security clearance for Applicant. Clearance is granted.

Michael H. Leonard
Administrative Judge