



## **SYNOPSIS**

Applicant is 32 years old and works for a federal contractor as a personnel security adjudicator. While applying for a security clearance she learned that her husband lied to her about his citizenship status. He is a citizen of Nigeria and remained in the U.S. after his student visa expired. She was unaware of what his immigration status was until she sponsored him for permanent residency. His application is still pending. Applicant's husband has financial interests and familial ties to Nigeria, but she could not articulate the full extent of them. She has failed to mitigate the security concerns raised under Guideline B, foreign influence. Clearance is denied.

## **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 May 30, 2007, detailing the basis for its decision—security concerns raised under 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. Applicant answered the SOR in writing on July 18, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on August 16, 2007. I convened a hearing on September 5, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered two exhibits that were marked as GE 1-2, and admitted without objections. Department Counsel also offered six exhibits that were marked as HE I-VI and requested I take administrative notice. Five of the six exhibits were from official publications. The sixth exhibit was a brief. I took administrative notice of HE I-V and considered the content of HE VI. Applicant testified on her behalf, had one witness testify, and offered one exhibit that was marked as AE A and was admitted without objection. DOHA received the hearing transcript (Tr.) on September 14, 2007.

## **FINDINGS OF FACT**

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 32-year-old personnel security adjudicator and has worked in this position for a federal contractor since 2003. She was granted a secret security clearance in 2005. Applicant met her Nigerian born husband in 2002 while working at another job.<sup>1</sup> He is a Nigerian citizen who grew up there and came to the U.S. sometime in the 1990s.<sup>2</sup> Applicant was unsure of the exact year he

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<sup>1</sup>Tr. 29.

<sup>2</sup>Tr. 48-49.

entered the U.S. She believes he entered the U.S. on a student visa.<sup>3</sup> He attended college in the U.S. and received both a two year and four year degree.<sup>4</sup> Applicant is unaware under what legal immigration status her husband remained in the U.S. after he completed his schooling and his student visa expired.<sup>5</sup> While they were dating she asked him if he was a U.S. citizen and he told her yes he was a U.S. citizen.<sup>6</sup> She asked to see some documentation and he showed her what she thought was a social security card and an identification card. Later when she was applying for a security clearance in 2005, she requested he provide her with the documents to show his legal residency status for her application and he was unable to do so because he did not have any.<sup>7</sup> He admitted he lied to her about his residency status. She stated she did not know he was not a U.S. citizen until she requested the documents so she could obtain her security clearance. She voiced her concern about him lying and failing to tell her about important matters, but said: “I chose to forgive him.”<sup>8</sup> Since then she has petitioned for her husband to receive legal status in the U.S. as her spouse.<sup>9</sup> This petition was approved in March 2006 and affords her husband legal status in the U.S. He is not yet a permanent resident alien and is still a citizen of Nigeria.<sup>10</sup> Appellant testified that her husband is an accountant, but did not articulate how he works in the U.S. legally without a green card.

Appellant stated that she takes care of the finances because her husband is not responsible when it comes to handling money and does not tell her what he spends money on.<sup>11</sup> She believes her now deceased father-in-law sent her husband money and it went into their joint account, but the money was not for her benefit.<sup>12</sup> She stated her husband does not have access to her money which goes into a separate account.<sup>13</sup> They have a joint account with her credit union and she was required to sponsor him so he could be on the account.<sup>14</sup>

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<sup>3</sup>*Id.*

<sup>4</sup>*Id.*

<sup>5</sup>Tr. 54, 99.

<sup>6</sup>Tr. 56, 93.

<sup>7</sup>Tr. 57, 94.

<sup>8</sup>Tr.111.

<sup>9</sup>GE 2; Tr. 330-31.

<sup>10</sup>Tr. 95.

<sup>11</sup>Tr. 104-105.

<sup>12</sup>Tr. 46.

<sup>13</sup>Tr. 47.

<sup>14</sup>*Id.*

Applicant's father-in-law is deceased.<sup>15</sup> Her mother-in-law and five sisters-in-law are all residents and citizens of Nigeria. Applicant testified her husband's parents were the King and Queen of a city in Nigeria.<sup>16</sup> She also believed upon the father's death, because Applicant's husband did not secede to the throne, the title was bestowed upon another family.<sup>17</sup> She also believed he was at one time attacked in his palace. She believed her father-in-law was also an engineer who worked for the Nigerian Federal Ministry of Work and Housing.<sup>18</sup> One of her sisters-in-law is also employed by the same ministry, working in the housing area.<sup>19</sup> Applicant stated she does not know what assets her husband may have in Nigeria.<sup>20</sup> She says she was told that his mother gave him some land.<sup>21</sup> She was also told that his siblings received an inheritance upon their father's death, but she does not know if her husband also received one.<sup>22</sup> She could not articulate where the land he received from his mother is located or the value of it, but confirmed it was in Nigeria.<sup>23</sup>

Applicant met her future mother-in-law when she came to the U.S. to visit in 2002 and stayed with them.<sup>24</sup> They were living together at the time. When Applicant and her husband married, four of his sisters attended the wedding in the U.S.<sup>25</sup> They stayed for three to four days before returning to Nigeria. Applicant's sisters-in-law are married and some have children. He has aunts and uncles living in Nigeria and Applicant estimates her husband has approximately 10 nieces and nephews also living in Nigeria.<sup>26</sup> She is unaware of what her sisters-in-law's husbands do for employment. She is uncertain, except for the one sister-in-law, as to if the others are employed and what they do.<sup>27</sup> In addition to their wedding visit, one sister stopped for a two day visit while in the U.S. to attend a conference. Another sister visited over Thanksgiving one year for a day. When Applicant talks to her sisters-in-law it is usually through phone calls her husband is having with them, not ones she initiates. She is uncertain how often he calls them, but minimally it is for special occasions, such as

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<sup>15</sup>Tr. 38.

<sup>16</sup>Tr. 39.

<sup>17</sup>Tr. 40. Applicant was not certain of most of the facts surrounding her in-laws and explained this is what she believed or thought, but was not certain.

<sup>18</sup>Tr. 69-70.

<sup>19</sup>Tr. 78.

<sup>20</sup>Tr. 66.

<sup>21</sup>*Id.*

<sup>22</sup>Tr. 67.

<sup>23</sup>Tr. 66.

<sup>24</sup>Tr. 59.

<sup>25</sup>Tr. 59-60.

<sup>26</sup>Tr. 62-63.

<sup>27</sup>Tr. 42.

birthdays and anniversaries.<sup>28</sup> She admits she has corresponded with her in-laws through emails and estimated it is between 20-45 emails a year. She testified that her husband feels affection towards his family, but she does not. She does not know how much contact he has with them.<sup>29</sup> Applicant is unsure if her husband has any friends in Nigeria. Applicant does not intend of traveling to Nigeria in the future. She is uncertain if her husband intends on traveling there in the future.

Applicant works as a security adjudicator for a federal contractor. She screens applications of potential employees seeking jobs in sensitive areas that need some type of clearance. The guidelines she uses to make a recommendation whether a potential employee should receive a clearance are very similar to those used in this proceeding. She is well respected by her supervisor and considered very particular about her work and is considered a hard worker. Her supervisor commented that she strictly follows the adjudicative guidelines when considering employees and does not deviate from them.<sup>30</sup>

Nigeria is a federal republic in western Africa with a population of approximately 140 million and the most populous African nation.<sup>31</sup> Since gaining independence Nigeria has experienced political instability and economic crisis.<sup>32</sup> The political landscape has been dominated by military coups and long military-imposed transition programs.<sup>33</sup> It has been under civilian rule since 1999.<sup>34</sup>

The Nigerian government's human rights record is poor, and the government at all levels continues to commit serious human rights abuses.<sup>35</sup> Areas of Nigeria are seriously unstable and there are outbreaks of armed conflicts between religious, political, and ethnic factions, including ongoing religious and ethnic conflicts between Muslim and Christian groups and others.<sup>36</sup> Americans are warned against traveling in Nigeria.<sup>37</sup> Violent crime is committed by ordinary criminals and police and others in military uniforms.<sup>38</sup> Americans are warned of the dangers in traveling in Nigeria due to the deterioration of the security situation and that kidnaping for ransom ,including U.S. citizens

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<sup>28</sup>Tr. 43-45, 75.

<sup>29</sup>Tr. 75-76.

<sup>30</sup>Tr. 119-120.

<sup>31</sup>HE 1.

<sup>32</sup>He 2 at 1; HE 1 at 2-3.

<sup>33</sup>HE 1 at 37, HE 2 at 1-14.

<sup>34</sup>HE 2 at 2-3.

<sup>35</sup>HE IV at 1.

<sup>36</sup>HE V at 1.

<sup>37</sup>*Id.* at 1-2.

<sup>38</sup>*Id.*

is a real problem in the petroleum section of the country.<sup>39</sup> The U.S. State Department Travel Warning also states that al-Qaida leadership has expressed an interest in overthrowing the government of Nigeria.<sup>40</sup>

## POLICIES

“[N]o one has a ‘right’ to a security clearance.”<sup>41</sup> 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.”<sup>42</sup> The President has 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.”<sup>43</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>44</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>45</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>46</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>47</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.<sup>48</sup>

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information.<sup>49</sup> “Substantial evidence” is “more than a scintilla but less

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<sup>39</sup>*Id.*

<sup>40</sup>*Id.*

<sup>41</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>42</sup>*Id.* at 527.

<sup>43</sup>Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

<sup>44</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>45</sup>*Id.*

<sup>46</sup>*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

<sup>47</sup>Executive Order 10865 § 7.

<sup>48</sup>*See* Exec. Or. 10865 § 7.

<sup>49</sup>*See Egan*, 484 U.S. at 531.

than a preponderance.”<sup>50</sup> The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.<sup>51</sup>

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>52</sup> An applicant “as the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>53</sup> “[S]ecurity clearance determinations should err, if they must, on the side of denial.”<sup>54</sup>

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

## CONCLUSIONS

As set forth in the regulation, every recommended personnel security decision must be a fair and impartial overall common sense decision based on all available evidence, both favorable and unfavorable. The decision must be arrived at by applying the standard that the grant or continuance of a security clearance or access to classified information is clearly within the interests of national security.

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

### **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 in a way 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 whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

I have considered all of the Foreign Influence Disqualifying Conditions (FI DC) and especially FI DC 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*

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<sup>50</sup>See *v. Washington Metro. Area Transit Auth.*, 36 F.3rd 375, 380 (4th Cir. 1994).

<sup>51</sup>See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996)

<sup>52</sup>See Directive ¶ E3.1.15.

<sup>53</sup>ISCR Case No. 01-207000 at 3 (App. Bd. Dec. 19, 2002).

<sup>54</sup>*Egan*, 484 U.S. at 531; see Guidelines ¶ 2(b).

*heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*), FI DC 7(b) (*connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information*), FIDC 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*), and FI DC 7(e) (*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*). Applicant's husband, with whom she lives with in the U.S. is a citizen of Nigeria. He lied to her about his citizenship status and she has concerns about him telling her important things. It appears he was living illegally in the U.S. after his student visa expired. She has since sponsored him for permanent residency status. Her contact with her husband is obviously close and his deceptive conduct creates a potential conflict of interest between her obligation and desire to help her husband and her obligation to protect sensitive information. In addition, Appellant simply did not know certain information about her husband that raises security concerns. She knows he owns property in Nigeria, but was unaware of where it is, how much, and its value. She believes he likely inherited something from his father, but was unaware of what it was or its value. She does not know if he has friends still in Nigeria. She knows he communicates regularly with his family, but does not know how often they talk or email. She knows one of her sisters-in-law works for the Nigerian government, but was unaware of what the specifics of her job entailed. She also was only vaguely aware of the others' employment and did not know how their husbands were employed. Because there was a void in information about her in-laws and because of her husband's relationship with his family an increased risk is raised. I find all of the above FI DC apply to the facts.

I have considered all of the Foreign Influence Mitigating Conditions (FI MC) especially (FI MC 8(a) (*the nature of the relationships with the foreign person, 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.*), FI MC (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 to the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest*), FI MC 8(c) (*contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation*), FIMC 8(f) (*the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual*). Applicant obviously has a close relationship with her husband. She does not with her in-laws and was unfamiliar with many things about them. I conclude that her contact and communication with her in-laws is casual and infrequent and is mitigated under FI MC 8(c). However, her contact with her husband creates a conflict of interest. She has already demonstrated a profound sense of loyalty to her husband when she forgave him for lying to her about a very serious matter and then chose to sponsor him for legal status. Although she has a loyalty to the U.S. that is not questioned, I cannot find that there is little likelihood that she would resolve any conflict of interest in favor of the U.S. It is just too great of a burden to presume she would choose her country over her husband. Although her husband has lived in the U.S. since the 1990s he still has very strong ties to Nigeria and his family there. He owns

property and it is unknown what his intentions are for returning.<sup>55</sup> I have also considered the political climate in Nigeria as it relates to a heightened security risk and conclude that although it is a country with ties to the U.S. the instability of the country increases the security risk factors. After considering all of the evidence I find none of the other FI MC apply.

### **Whole Person Analysis**

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered the adjudicative process factors listed in ¶ 2a (1)-(9) of the Directive to be considered in evaluating a person's eligibility to hold a security clearance. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the Guidelines should be followed whenever a case can be measured against this policy guidance.

I have weighed all of the disqualifying and mitigating conditions under Guideline B, foreign influence and evaluated all the evidence in the context of the whole person. I considered that Applicant was quite unfamiliar with her husband's family background, ties to his family, and financial ties to Nigeria. I also considered that her husband lied to her about his immigration status and she does not have complete confidence that he tells her important information. These factors make her especially vulnerable. I conclude Applicant has not mitigated the security concerns based on Guideline B, foreign influence. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her a security clearance.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline B:

AGAINST APPLICANT

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<sup>55</sup>Appellant's husband's financial interest in Nigeria was not alleged as a security concern and will not be considered for disqualifying purposes, but it will be considered in evaluating the "whole" person.

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

**DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Carol G. Ricciardello  
Administrative Judge