



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 13-00200  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

06/12/2013

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the security concerns arising from her possession and past use of a Nigerian passport. She is a U.S. citizen and only acquired a Nigerian passport to protect her U.S. passport and identity from potential compromise upon traveling to Nigeria to pay her final respects to her parents and to attend her sister’s wedding. She surrendered the Nigerian passport to her facility security officer and had it destroyed. Applicant also mitigated the concerns arising from her connections to her family members living in Nigeria, as she can be expected to resolve any conflict of interest arising from such connections in favor of the United States. Clearance is granted.

**Statement of the Case**

On March 26, 2013, the Department of Defense (DoD), in accordance with DoD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). On April 7, 2013, Applicant timely answered the SOR and requested an expedited hearing to establish her eligibility for access to classified information (Answer).

On May 13, 2013, Department Counsel indicated the Government was ready to proceed with a hearing. I was assigned the case on May 23, 2013. Per Applicant's request for an expedited hearing, I scheduled her hearing for May 31, 2013.<sup>1</sup>

Government Exhibits (Gx.) 1 and 2 and Applicant's Exhibit (Ax.) A were admitted without objection. Department Counsel's proposed summary of facts regarding Nigeria and its relationship with the United States was marked as Gx. 3, but not admitted. The seven U.S. Government documents referenced in Gx.3 were considered in assessing the security concerns at issue and relied upon in setting forth the relevant, administrative facts regarding Nigeria. Applicant appeared at the hearing and testified. I granted her request for additional time to submit documents post-hearing. She timely submitted Ax. B – J and they were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 10, 2013.

### **Findings of Fact**

Applicant, 38, is a U.S. citizen by birth. After Applicant completed kindergarten, her parents decided to move the family to their home country, Nigeria. Applicant grew up in Nigeria, but her family routinely visited the United States during school breaks and holidays. She always considered herself an American living abroad and never assimilated into Nigerian society and culture. After graduating from high school, Applicant was accepted by a U.S. college and returned to the United States. Her parents were unable to pay for college, so she worked part time while going to school. Her parents routinely tried to convince her to return to Nigeria, but she decided to remain in the United States. (Tr. at 27, 31-32, 34, 48-49, 57-61)

After graduating from college, Applicant married, secured a job, and started a family in the United States. She has two children, ages 10 and 11, who were born and raised in the United States. In 2008, she earned her master's degree while working full time. In 2012, she was offered an engineering position with a Defense contractor, for which she needs a security clearance. (Tr. at 27-28, 41, 49; Gx. 1; Ax. F – G, Ax. J)

Applicant's father and mother passed away in 2005 and 2010, respectively. (Gx. 1) She traveled to Nigeria to visit them when they were sick and to attend their funerals. She was concerned that her U.S. passport and identity might be compromised in her travels to Nigeria, so she applied for and was granted a Nigerian passport. She only used the Nigerian passport to pay her final respects to her parents and attend her sister's wedding. (Tr. at 29-30, 43-44, 56-57)

Applicant voluntarily disclosed her Nigerian passport and travels to Nigeria on her security clearance application. (Gx. 1) During her background investigation, Applicant indicated her willingness to surrender her Nigerian passport if required as a precondition for a security clearance. (Gx. 2) She subsequently surrendered her

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<sup>1</sup> Applicant waived notice of the hearing at least 15 days prior to it being held. Directive, Enclosure 3, ¶ E3.1.8. (Tr. at 9-10)

Nigerian passport to her facility security officer, who destroyed it. (Ax. A) She credibly testified that she has no intent to renew her Nigerian passport. (Tr. at 57)

Applicant has two brothers and a sister. One of her brothers is a U.S. citizen, who lives and works in the United States. Her younger brother and sister are Nigerian citizens, living in Nigeria. Both were granted U.S. legal permanent residency status and are awaiting admission to the United States. Applicant frequently communicates with her siblings and provides her sister financial support. (Tr. at 28-29, 32-40; Gx. 1 – 2)

Applicant's husband was born in Nigeria, immigrated to the United States in the early 1990s, and became a U.S. citizen in 2004. Applicant's mother-in-law is originally from Nigeria, recently became a U.S. citizen, and is living in the United States with one of her daughters. (Tr. at 44; Gx. 2; Ax. D) Applicant's brother-in-law (husband's brother) is a Nigerian citizen. He has been granted U.S. legal permanent residency status. He recently visited Applicant and her spouse, in preparation for his imminent move to the United States. (Tr. at 45-46, 55-56)

Applicant has several other distant relatives in Nigeria, but has not spoken to any of them in several years. She has not maintained active contact with any of her grade school friends from Nigeria. (Tr. at 41-42, 47) None of Applicant's family works for the Nigerian government and none, except her husband, are aware that she is seeking a U.S. security clearance as part of her job. (Tr. at 36-37; Gx. 2)

Applicant and her husband own their home in the United States. Her husband works for a major U.S. company, and their combined yearly income is about \$200,000. She has a pension from a prior job with a U.S. employer and approximately \$40,000 in her employer-sponsored 401(k) retirement account. Applicant and her husband have no bank accounts, properties, or assets in Nigeria. They are actively involved in their local community through their church. (Tr. at 46-47, 49-54; Ax. C, Ax. H – I)

Applicant is well respected at her current job and her program manager notes that she has "excellent work ethic." (Ax. B) She received an exceptional rating on her performance review from her prior job. (Ax. E)

### Administrative Facts – Nigeria

Nigeria gained its independence from Britain in 1960. Since gaining its independence, Nigeria has been plagued by recurring outbreaks of sectarian, ethnic, and communal violence.

Nigeria is a federal republic, with a political structure similar to the United States. It is a key power in Africa due to its size and political and economic role in the region. It is Sub-Saharan Africa's second largest economy and a major crude oil producer. Despite its oil wealth, Nigeria remains underdeveloped. Democratic and economic progress in Nigeria is challenged by poor governance, entrenched corruption, internal conflict, ineffective service delivery, and pervasive poverty.

The United States considers its strategic relationship with Nigeria to be among the most important on the African continent. Relations between the two nations have steadily improved since 1999, with the resumption of basic democracy in Nigeria. An estimated one million Nigerians and Nigerian-Americans live, study, and work in the United States; while over 25,000 Americans live and work in Nigeria.

The U.S. State Department warns U.S. citizens of the risks of travel to Nigeria, particularly during the holiday season, and continues to recommend that U.S. citizens avoid all but essential travel to a number of states within Nigeria where the risk of kidnappings, robberies, and other armed attacks is high. A militant, Islamist terrorist group, based in the north of the country, poses a significant concern. Serious human rights violations were committed by terrorist and there were reports of human rights abuses by security forces.

### **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may

deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

## **Analysis**

### **Guideline B, Foreign Influence**

The foreign influence concern is set forth at AG ¶ 6:

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.

An individual’s familial ties to a foreign country can raise the foreign influence concern. However, there is no *per se* rule against applicants who have such ties. Instead, in addressing the foreign influence concern, an administrative judge must consider the foreign government involved; the intelligence gathering history of that government; the country’s human rights record; and the presence of terrorist activity in that country.<sup>2</sup>

Applicant’s connections to family members in Nigeria, in light of the country conditions and threat of terrorism in Nigeria, raise a heightened risk of foreign influence. This evidence also establishes the following disqualifying conditions under AG ¶ 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;

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<sup>2</sup> See ISCR Case No. 11-04980 at 4 (App. Bd. Sep. 21, 2012).

(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; and

(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.

Applicant's foreign familial connections and finding of heightened risk does not end the analysis, because AG ¶ 8 lists a number of conditions that could mitigate the concern. The following mitigating conditions under AG ¶ 8 are relevant:

(a) the 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.; and

(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.

AG ¶¶ 8(a) and 8(b) apply. Applicant is a U.S. citizen who decided, upon reaching the age of majority, that she wanted to return and live in her country of birth, the United States. She earned her bachelor's and master's degrees in the United States. She worked the entire time while going to school and, although it would have been far easier, both financially and personally, to return to Nigeria, she stayed in the United States to pursue her lifelong dreams and ambitions. She has now lived in the United States the majority of her life. She started a family in the United States, and all her property and assets are in the United States. Beyond her immediate family members, Applicant has several close family members and friends in the United States. Her remaining close family members in Nigeria are waiting to lawfully immigrate to the United States, which they plan to make their home.

Furthermore, Nigeria is a democracy and strategic partner of the United States. Her foreign family members do not reside in any of the areas in Nigeria listed by the U.S. State Department as raising a significant security concern. Accordingly, under this unique set of circumstances, it is highly unlikely that Applicant would be placed in a position of having to choose between the interest of her foreign family members and her obligation to protect U.S. secrets. More importantly, Applicant established, through her deep and longstanding relationships in the United States, that she can be expected to resolve any potential conflict of interest in favor of the United States.

## **Guideline C, Foreign Preference**

Under AG ¶ 9, the concern involving foreign preference arises “[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States.” Such an individual “may be prone to provide information or make decisions that are harmful to the interests of the United States.”

Applicant’s acquisition and use of a Nigerian passport raises this concern and also establishes the disqualifying condition at AG ¶ 10(a), “exercise of any right, privilege or obligation of foreign citizenship,” to include “possession of a current foreign passport.”

Applicant mitigated the foreign preference concern. Her acquisition of the Nigerian passport was a security-savvy move to prevent the compromise of her U.S. passport and identity. She surrendered her Nigerian passport without hesitation and had it destroyed, when informed of the potential security concerns. Furthermore, her testimony and conduct over the past 21 years demonstrates that she does not have a preference for Nigeria or any other foreign country over the United States. Specifically, Applicant established the mitigating condition at AG ¶ 11(e), “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.”

## **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of an applicant’s conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>3</sup> I incorporate my comments under Guidelines B and C herein, and note some additional whole-person factors. Applicant’s personal character and integrity, which are vital matters to be considered in assessing an individual’s suitability for a security clearance, are unassailable. She has been candid about her foreign connections from the start of her background investigation. Furthermore, I had an opportunity to observe her demeanor while she testified. I found her forthcoming regarding her familial connections to Nigeria and wholly credible when she testified about her deep and longstanding connections to the United States. These favorable whole-person factors, in conjunction with the mitigating conditions noted above, mitigate the foreign preference and foreign influence concerns. Overall, the record evidence leaves me with no questions or doubts about Applicant’s eligibility for access to classified information.

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<sup>3</sup> The non-exhaustive list of adjudicative factors are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

### **Formal Findings**

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence): FOR APPLICANT

Subparagraphs 1.a – 1.b: For Applicant

Paragraph 2, Guideline C (Foreign Preference): FOR APPLICANT

Subparagraphs 2.a – 2.c: For Applicant

### **Conclusion**

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is granted.

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Francisco Mendez  
Administrative Judge