



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



In the matter of:)
)
) ISCR Case No. 13-00585
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

09/16/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, Applicant has mitigated the security concerns raised under the guideline for foreign influence. Her request for a security clearance is granted.

Statement of the Case

On June 21, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) setting forth security concerns under Guideline B (Foreign Influence) of the Adjudicative Guidelines (AG).¹ In her undated Answer to the SOR, Applicant admitted all of the allegations under Guideline B. She also requested a hearing before an administrative judge.

The case was assigned to me on July 31, 2013. DOHA issued a Notice of Hearing on August 6, 2013. At the hearing on August 21, 2013, I admitted two Government exhibits, (GE 1 and 2) and three Applicant exhibits (AE A-C). DOHA received the transcript (Tr.) on August 30, 2013.

¹ See Executive Order 10865 and DoD Directive 5220.6. Adjudication of this case is controlled by the Adjudicative Guidelines implemented by the Department of Defense on September 1, 2006.

Procedural Ruling

I take administrative notice of facts relating to Nigeria contained in U.S. Government documents offered by Department Counsel. The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute.

Findings of Fact

Applicant's admissions to the SOR are incorporated as findings of fact. I make the following additional findings of fact.

Applicant, 38 years old, was born in Nigeria. She moved to the United States in 1995, and completed a bachelor's degree at a U.S. university in 1997. She married in 1998, and attained her U.S. citizenship in 2005. Applicant's husband was also born in Nigeria, and became a naturalized U.S. citizen in 1996. Their two children, who are 8 and 14 years old, were born in the United States. Since September 2012, she has held the position of database developer for a federal contractor. This is her first application for a security clearance. (GE 1, 2; Tr. 19-25)

Applicant's 64-year-old mother is a citizen and resident of Nigeria. She was a department head for the ministry of health in Nigeria for more than three decades. She has been retired since 2008. She is currently the pastor of a church. Applicant speaks with her by telephone once per month. Applicant's mother visited her in the United States in 2004 and 2012. Applicant visited her mother in Nigeria in 2006 and 2008.² She does not provide financial support to her mother or any foreign family members. (GE 1, 2; Tr. 26-29, 39)

Applicant's brother and half-brother are citizen-residents of Nigeria. Her 35-year-old brother attended college in the United States. Applicant has not seen him in person since his graduation in 2004, when he moved to another U.S. city. Her brother returned to Nigeria, and is now a recruiting manager for an American company in Nigeria. Applicant's half-brother is 27 years old and unemployed. She last saw her half-brother in 2008. She is in touch with both relatives by telephone a few times per year, primarily for birthday or holiday greetings. (GE 1, 2; Tr. 29-33, 52-53)

Applicant's mother-in-law (allegation 1.c) was a citizen and resident of Nigeria. She passed away about one week before Applicant's hearing. Applicant's husband has two married brothers who are citizens and residents of Nigeria. One of Applicant's brothers-in-law is about 35 years old and owns a construction company. His wife is a homemaker. They visited Applicant and her husband in December 2012. The other brother-in-law is about 37 and works in a bank, as does his wife. They visited Applicant

² Applicant possessed a Nigerian passport that expired in 2012. She provided documentation showing she surrendered it to her assistant facility security officer on April 9, 2013. The SOR does not include allegations regarding Guideline C, foreign preference. (GE 2; AE A; Tr. 15, 21-22, 42)

and her husband in the United States in March 2013. The visits were the first time Applicant remembers meeting her sisters-in-law. She could not provide much information about her in-laws because she has little contact with them other than a “hello” on the telephone when her husband calls them. Applicant has no other family members in Nigeria. None of her Nigerian relatives are aware that she is applying for a security clearance. (GE 1, 2; Tr. 33-38, 40, 43)

Applicant’s assets in the United States include her home and several financial accounts. Her house is valued at approximately \$250,000. Her 401(k) account balance is about \$50,000, and she has approximately \$10,000 in cash accounts. She has no real property, funds, or other financial assets in Nigeria. Applicant testified at the hearing, “I have been here for almost 20 years and everything I own, my interests, my friends, everything is here.” (Tr. 40-41, 46)

Applicant’s previous supervisor of five years provided a character reference noting that she trusted Applicant completely while Applicant had access to the personal information of thousands of customers. A manager for a large contractor, who supervised Applicant in 2012, commented on her honesty and stated that after Applicant acquired knowledge of a sensitive system, she “followed process and procedures to keep the data secure.” Applicant’s pastor stated that Applicant has been involved in the church for seven years, where she assists with the children’s ministry. Her neighbor of 14 years noted that Applicant is actively involved in her community, is trustworthy, and has “high moral standards and integrity.” (AE B)

Administrative Notice

Federal Republic of Nigeria (Nigeria)

Nigeria, the most populous nation in Africa, is poor and underdeveloped despite its oil wealth. After gaining independence from Britain in 1960, it was politically unstable. However, in 1999, it transitioned to a democratic government. The 2011 elections were characterized by observers as a significant improvement over previous elections, although problems remained.

Nigeria is challenged by poor governance, corruption, internal conflict, and pervasive poverty. Human rights abuses, primarily by the militant sect Boko Haram, included kidnappings, killings, suicide bombings, and other attacks. Security services also engage with impunity in arbitrary detention, denial of fair trial, beatings, and extrajudicial killings. The U.S. State Department warns U.S. citizens to avoid all but essential travel to a number of states in Nigeria.

The Nigerian government is working to improve coordination and cooperation both domestically and internationally on counterterrorism issues. In 2011, the president created the position of counterterrorism coordinator. Authorities have intensified efforts to counter the terrorist activities of Boko Haram. The U.S. State Department

antiterrorism assistance program and Federal Bureau of Investigation (FBI) programs provide training to bolster Nigeria's ability to address terrorist activities.

Over the past decade, Nigeria has played a pivotal role in supporting peace in Africa. It provided most of the troops for United Nations peacekeeping missions in several African countries. Relations between Nigeria and the United States have improved since basic democracy was restored in 1999. Cooperation has been excellent on important foreign policy goals such as regional peacekeeping. The United States considers its relationship with Nigeria to be among the most important on the African continent.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the (AG).³ Decisions must also reflect consideration of the "whole-person" factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of disqualifying or mitigating conditions does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be so measured, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁴ for an applicant to receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it falls to applicants to refute, extenuate, or mitigate the Government's case. Because no one has a "right" to a security clearance, applicants bear a heavy burden of persuasion.⁵ A person who has access to classified information enters a fiduciary relationship based on trust and confidence. The Government has a compelling interest in ensuring that an applicant possesses the requisite judgment, reliability, and trustworthiness to protect the national interest as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.⁶

³ Directive. 6.3.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern related to 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.

The following disqualifying conditions under AG ¶ 7 are relevant:

- (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; and
- (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.

Family ties with a resident or citizen of a foreign country do not automatically disqualify an applicant from obtaining a security clearance; such ties are only disqualifying if they create a heightened risk of foreign exploitation or a potential conflict of interest. Applicant is in touch with immediate family members including her mother and brothers, and also with her in-laws, who are citizen-residents of Nigeria. She visited Nigeria in 2006 and 2008, and her mother and in-laws have visited her in the United States. Such ties constitute a heightened risk of foreign influence, and create a potential conflict of interest. Disqualifying conditions AG ¶¶ 7(a) and (b) apply.

The foreign influence guideline also includes factors that can mitigate security concerns. I have considered all of the mitigating factors under AG ¶ 8, especially the following:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those
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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 United States; 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.

Although Applicant has several relatives in a foreign country, only her relationship with her mother is close. She speaks with her mother once per month. She has sporadic telephone contact with her brother and half-brother, a few times per year, primarily on special occasions. She has not seen her brother in person since 2004. Her contact with brothers-in-law is less frequent, and is mostly a “hello” when her husband calls them. She knows little of her sisters-in-law and has only met them once. Her mother-in-law has recently passed away. Her mother was a government employee for many years, but has been retired for five years and is a pastor of a local church. Applicant’s mother and other family members do not know of her application for a security clearance. The country in question must be considered⁷ in evaluating the likelihood of exploitation. Although extremist groups are active in Nigeria, the government is working to counter their activities. There is no indication that the country targets individuals to obtain classified information. It is unlikely Applicant would have to choose between the interests of Nigeria and the United States.

Moreover, Applicant has strong ties to the United States, which weigh in her favor when evaluating the possibility of exploitation or potential conflicts of interest. She has established her life here for almost two decades. She earned a college degree in the United States and has worked for U.S. companies for years. Her husband and children are U.S. citizens. All of her financial assets are in the United States, including her home, her 401(k) account, and her cash accounts. Her U.S. assets total \$310,000. Applicant has no bank accounts, real property, or other financial assets in Nigeria. I conclude Applicant would choose her U.S. ties over her foreign connections, and would resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and (b) apply.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant’s security eligibility by considering the totality of the Applicant’s conduct and all the relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

⁹ See ISCR Case No. 04-07766 at 3 (App. Bd., Sep 26, 2006) (the nature of the foreign government involved must be evaluated in foreign influence cases).

(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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant chose to come to the United States to further her education. She has built her life here for almost 20 years. Although Applicant is in touch with family members in Nigeria, she credibly testified that her life is in the United States. Applicant, her husband, and children are all U.S. citizens and residents. She earned a bachelor's degree at a U.S. university, worked for U.S. companies, married, and is raising her children in the United States. She has also accrued substantial U.S. financial assets, and has no financial assets in Nigeria. Applicant's ties to Nigeria are outweighed by her ties to the United States. Her history demonstrates that she is unlikely to jeopardize the life she has built here by making decisions that would harm the United States. Overall, the record evidence satisfies the doubts raised concerning Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline B	FOR APPLICANT
Subparagraphs 1.a – 1.e	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge