DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 14-04307
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

08/21/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On November 26, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline C (Foreign Preference), Guideline B (Foreign Influence), Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on April 2, 2015. A notice of hearing was issued on April 22, 2015, scheduling the hearing for June 16, 2015.[1] Government Exhibits (GX) 1-7 were admitted into evidence without objection. Applicant

[1]The hearing was postponed for good cause. Applicant was displaced due to a home fire. The case was rescheduled for July 23, 2015. Applicant received notice and the hearing was held as rescheduled.

testified and submitted Applicant Exhibits (AX) A-B, which were admitted without objection. The transcript was received on July 31, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations under Guideline C and Guideline F, and provided explanations. Applicant denied the allegations under Guideline E.[2]

Applicant is 33 years old. He was born in Nigeria. In 2000, he came to the United States. He became a naturalized citizen in 2003. Applicant served in the United States Navy from May 2001 until April 2009. When his active duty ended in 2006, he received an honorable discharge, and joined the reserves until 2009. He received his undergraduate degree in 2005 and his master's degree in 2006. He is married and has two children. Applicant completed security clearance applications in 2009 and 2014.He has been employed with his current employer since March 2014. (GX 1)

The SOR alleges under Guideline C that Applicant maintained his Nigerian passport after becoming a naturalized citizen, and that he traveled to Nigeria on that passport in 2009, 2010, 2011, 2013, and 2014.

Applicant maintained his Nigerian passport when he became a U.S. citizen. He also has a U.S. passport. He was never advised that this was an issue, even when he was serving on active duty in the U.S. Navy. He used the Nigerian passport when he traveled to Nigeria on health missions. (Answer to SOR; Tr. 18)

Applicant acknowledged that at the time it was easier to use his Nigerian passport to enter the country and to use his U.S. passport when leaving Nigeria. When Applicant was interviewed by an investigator, Applicant told him that he would relinquish the Nigerian passport. Applicant produced documentation that as of February 13, 2015, his facility security officer (FSO) has the Nigerian passport in her custody.[3] (AX A)

The SOR alleges under Guideline F that Applicant has a 2009 judgment in the amount of $5,140; a collection account in the amount of $1,526; and a past-due mortgage account in the approximate amount of $2,659 (total mortgage balance $44,893).

Applicant admits that he was indebted to the account alleged in 3.a. for $5,140 When he left active duty service in 2006, he had a difficult transition to civilian life. He

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[2]At the hearing, Counsel withdrew the Guideline B allegations in full (2.a and 2.b). No request for Administrative Notice was made.

[3]In his 2009 interview, Applicant was asked if he was willing to relinquish the Nigerian passport and he responded affirmatively. No one raised the issue again.

took jobs when he could find them and most paid him very little. He was unemployed or underemployed in 2008-2009. He told the creditor about his financial situation and tried to settle. He had been making regular payments (about $100 a month). He learned that a judgment had been entered when he spoke with an investigator. Applicant stopped payments in 2010. Applicant told the investigator that he would try to locate the company and resolve the issue. Applicant could not find the company. He could not get any information and when he searched online, he learned that the company no longer was in business and never thought to contact a court. He testified that he no longer had the receipts for the payments that were made in 2010. (Tr. 61)

As to the debt in 3.b, a bank debt for $1,526, Applicant did not recollect the company name. However, he learned that it was bought by another company. (Tr. 23) He investigated the matter and learned that he could settle the account. He did not receive notice earlier because he was in the military. Applicant settled the account. He provided documentation that the final settlement payment was made for the account. (AX B)

The alleged debt in 3.c refers to a late mortgage payment to a credit union. The amount was $2,659. The mortgage was for a rental property that Applicant owned. (Tr. 25) He had a tenant renting the home, but they eventually stopped paying the mortgage. Applicant's salary would not allow him to make both mortgage payments. He tried to work with the credit union regarding the mortgage but it was a split loan. (Tr. 26) He then was notified that the house would be sold or foreclosed. At that point, he believed that would resolve the issue. He called the credit union and was told that the loan was charged-off as a bad debt. (Tr. 27) He asked what to do and he testified that the credit union said there is nothing that you can do. Applicant testified credibly that he believed when the property was sold he was no longer responsible for the property.

In the 2014 interview, it notes that Applicant paid some medical bills that he had for his son. Applicant's credit report for 2014 (GX 3) reveals that he pays his accounts as agreed. It also lists the credit union accounts as "pays as agreed." The majority of the accounts on the report are current. It does note the account in 3.a in one place as closed and in another as paid as agreed. The judgment is still listed.

Applicant submitted two security clearance applications. The SOR alleges that Applicant falsified his 2014 security clearance application because Applicant answered Section 26 - Financial Record - Delinquency Involving Enforcement (in the past seven (7) years and Section 26 - Financial Record - Delinquency Routine Accounts with a "No."

Applicant denied any falsification regarding his financial status on the 2014 security clearance application. He explained that as far as he could remember the account in 3.a was more than seven years ago. He was also not aware of any judgment that was entered in 2009. He repeated his explanation for responding "No" to the second question in Section 26 for basically the same reason. He believed it was not within the time frame. He believed that the accounts in 3.b and 3.c became delinquent around 2006.

When cross examined about the dates of occurrence and why he did not respond "Yes", he was credible in that he did not intend to falsify any information. He answered to the best of his ability. The notes referred to in the 2009 and 2014 subject interviews show that he stated he was unaware of any judgment and that he believed the allegation in 3.b was already settled. (Tr. 84) He told the investigator that he did not have any account with the company alleged in 3.b. Applicant also was credible in that when he looked at the subject interviews at the hearing, it was not possible to state whether certain words or phrases were actually his or that of the investigator. (Tr. 89)

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ."[4] The burden of proof is something less than a preponderance of evidence.[5] The ultimate burden of persuasion is on the applicant.[6]

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-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 the applicant may deliberately or inadvertently fail to protect classified information. Such

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[4] *See also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

[5] *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

[6] ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."[7] "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[8] Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.[9] The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant's character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline C, Foreign Preference

Under AG ¶ 9 the security 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, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States."

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying:

> (a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:
>
> > (1) possession of a current foreign passport;
> >
> > (2) military service or a willingness to bear arms for a foreign country;
> >
> > (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
> >
> > (4) residence in a foreign country to meet citizenship requirements;
> >
> > (5) using foreign citizenship to protect financial. or business interests in another country;

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[7] *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

[8] ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

[9] *Id*.

(6) seeking or holding political office in a foreign country; and,

(7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and,

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant became a naturalized citizen in 2003. He served on active duty in the United States Navy. He obtained a Nigerian passport in 2005. He was never questioned about his Nigerian passport. He kept both his U.S. passport and his Nigerian passport because he had no idea that there was an issue with doing so. He offered to relinquish his passport when the subject came up in an investigation. The times that he used the passport were going to Nigeria for health missions from 2009 until 2014. He used his U.S. passport to return to the United States. At that time he did not hold a clearance and had no idea that this was an issue. AG ¶¶ 10(a)(1) and (3) apply.

AG ¶ 11 provides conditions that could mitigate security concerns:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority.

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and,

(f) the vote in a foreign election was encouraged by the United States Government.

Applicant surrendered his Nigerian passport which expired before his hearing, and provided documentation to corroborate his statement. He does not intend to use it. He had the Nigerian passport while serving in the United States Navy and was never put on notice that he needed to relinquish it. Applicant has mitigated the security concerns under the foreign preference guideline.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

> (A) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

In this case AG ¶ 16 (a) does not apply. Applicant answered his 2014 security clearance application to the best of his ability. He believed that the accounts were either paid or outside the seven-year time frame specified in the question. He is not a native English speaker. He answered the questions honestly. I do not find that he intentionally falsified his 2014 security clearance application. Despite the content in the 2011 and 2014 interviews, Applicant could not remember what he actually stated to the investigator. He scanned the documents briefly before the hearing. He at first questioned some of the things, but then he did not object to the documents. I believe that he has honestly responded to all questions and cooperated to the best of his ability in answering the security application and the questions at the hearing. Applicant's explanations persuade me that he is reliable, trustworthy and has met his burden to mitigate the personal conduct concerns based on the same reasons that he has mitigated the security concerns under the financial considerations guideline.

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

> Failure or an inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to

> protect classified information." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds."

Applicant admitted that he was indebted and had delinquencies when he left active duty in 2006. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant's financial delinquencies arose in 2006. He has taken actions to resolve the debts. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) applies.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances) applies. Applicant left the military and his transition into the civilian life was not smooth. He could not find jobs that paid the income that he had earned in the past. He was in the reserves, but still needed full-time work. He also had unemployment. He paid his bills as long as he could, and then he reached out to the creditors. He was not financially sophisticated with the mortgage loans. He believed his responsibility ended when the house was sold. He accepted a settlement offer on one debt and provided documentation. He acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has application. Applicant as noted in subject interviews paid small medical debts. He also tried to settle as soon as he learned about a debt. He made payments as long as he could and when he learned that the debt was not satisfied, he tried to locate the business, which was no longer in existence. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved, or is under control) applies. Applicant is current with his expenses.

Whole-Person Concept

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

> (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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 33 years old. He served in the U.S. Navy shortly after coming to the United States. He is an educated man. He also served in the reserves until 2009. He has relinquished his Nigerian passport. He provides for his family. He accepted employment to help pay his bills. He has resolved his delinquent debts. I found him candid and sincere in his testimony. He wants to serve the United States. He has persuaded me that there are clear indications that his financial problem has been resolved. He has mitigated the other concerns as well.

Applicant provided sufficient information to establish current judgment and reliability. He has mitigated the security concerns under the foreign preference, financial considerations, and personal conduct guidelines.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C :	FOR APPLICANT
Subparagraphs 1.a-1.b	For Applicant
Paragraph 2, Guideline B :	FOR APPLICANT
Subparagraph 2.a:	WITHDRAWN
Subparagraph 2.b:	WITHDRAWN
Paragraph 3, Guideline F:	FOR APPLICANT
Subparagraphs 3.a-3.c:	For Applicant
Paragraph 4, Guideline E:	FOR APPLICANT
Subparagraphs 4.a-4.b:	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 grant Applicant a security clearance. Clearance is granted.

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NOREEN A. LYNCH.
Administrative Judge