



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



In the matter of: )  
)  
) ISCR Case No. 14-05029  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

06/30/2016

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is a dual citizen of Nigeria and of the United States. His four brothers and three sisters are resident citizens of his native Nigeria. His two sons and two daughters are Nigerian citizens but reside in the United States. Foreign influence concerns raised by these foreign ties are overcome by his years of service to the United States. The foreign preference concerns raised by his possession of a foreign passport are mitigated by his surrender of that passport and his application to renounce his Nigerian citizenship. Clearance is granted.

**Statement of the Case**

On January 10, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant. The SOR detailed the security concerns under Guideline B, Foreign Influence, and Guideline C, Foreign Preference, and explained why the DOD CAF could not find it clearly consistent with the national interest to grant or continue a security clearance for Applicant. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as

amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant responded to the SOR on February 13, 2015, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On October 9, 2015, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant him a security clearance. On February 25, 2015, I scheduled a hearing for March 21, 2016.

At the hearing, two Government exhibits (GEs 1-2) and 12 Applicant exhibits (AEs A-K) were admitted into evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on March 30, 2016. At the Government's request, I agreed to take administrative notice of facts pertinent to the Federal Republic of Nigeria, as set forth in the Government's Administrative Notice request dated September 10, 2015.<sup>1</sup> The request was included in the record, although not marked formally as an exhibit. Applicant disputed the relevance of the facts for administrative notice to his case, but he did not object to the facts for administrative notice.

Applicant had been provided the Government's Administrative Notice request before the hearing, but only the Internet addresses for the source information relied on by the Government. Given a recent Appeal Board decision requiring that source documents in a case involving administrative notice be included in the record,<sup>2</sup> I held the record open after the hearing for the Government to provide the source documentation for its Administrative Notice request. Applicant was given a deadline of May 3, 2016, to respond to the Government's Administrative Notice request, to propose any facts for administrative notice, and to submit additional documentary exhibits.

On April 13, 2016, Department Counsel mailed extracts of the source documents relied on for its Administrative Notice request. On April 14, 2016, Applicant advised me

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<sup>1</sup> In its Administrative Notice request, the Government cited information gleaned from official reports or publications of the Congressional Research Service (*CRS Report for Congress, Nigeria: Current Issues and U.S. Policy*, dated July 18, 2012, and *Nigeria's Boko Haram: Frequently Asked Questions*, dated June 10, 2014); of the U.S. State Department (Fact Sheet *U.S. Relations with Nigeria*, dated December 9, 2014; *Country Reports on Terrorism 2014*, Chapter 2, Country Reports: Africa Overview; *Nigeria 2014 Human Rights Report*); *Quick Facts, Nigeria*, dated January 28, 2015; and *Nigeria Travel Warning*, dated July 27, 2015; and on an unclassified statement for the record by the Director of National Intelligence (*Worldwide Threat Assessment of the U.S. Intelligence Community for the Senate Select Committee on Intelligence*, dated January 9, 2014). After the hearing, Department Counsel provided extracts from the CRS and some State Department publications. I was not provided with the DNI's unclassified statement or with the State Department's Quick Facts or Travel Warning. I obtained copies of the *Quick Facts* and an updated *Travel Warning*, dated February 5, 2016, and incorporated them in the record.

<sup>2</sup> On November 3, 2015, the DOHA Appeal Board remanded ADP Case No. 14-01655 for the incorporation in that record of the "official notice documents" for administrative notice, which, as in this case, were identified only by URL. Citing ISCR Case No. 02-24875 (App. Bd. Mar. 29, 2006), the Appeal Board stated in part: "[b]ecause of the dynamic nature of the Internet, a reference to a document's URL in the case record would not necessarily be sufficient to preserve the matter for meaningful appellate review."

that he had moved after resigning from his job with defense contractor on March 25, 2016.<sup>3</sup> On April 22, 2016, Applicant submitted a letter from the Nigerian Consulate, which was admitted as AE L without objection. Applicant received at his new address the information relied on by Government for its Administrative Notice request, but elected not to propose additional facts for administrative notice. The facts administratively noticed are set forth below.

### **Summary of SOR Allegations**

The SOR alleged under Guideline B, foreign influence, that Applicant's four brothers (SOR ¶ 1.a) and four sisters (SOR ¶ 1.b) are Nigerian resident citizens, and that Applicant's two sons (SOR ¶ 1.c) and two daughters (SOR ¶ 1.d) are Nigerian citizens with U.S. residency. Under Guideline C, foreign preference, Applicant allegedly possesses a Nigerian passport valid from November 2012 to November 2017 (SOR ¶ 2.a). Applicant provided a detailed answer in which he admitted the Guideline B allegations but denied that he could be influenced because of his family ties to Nigeria. About the Guideline C concern, Applicant indicated that he had denounced Nigerian citizenship when he took the oath of allegiance to the United States and that his possession of a valid Nigerian passport and claim of dual citizenship was a mistake based on misinformation. He indicated that he would be relinquishing his Nigerian passport "to the custody of the United States government . . . once a designated drop-off location is communicated to [him]."

### **Findings of Fact**

After considering the pleadings, exhibits, transcript, and the facts pertaining to Nigeria for administrative notice, I make the following findings of fact.

### **Applicant's Personal Background**

Applicant is a 58-year-old native of Nigeria. He has three brothers and four sisters who are Nigerian resident citizens and range in age from 31 to 56. They live in southwestern Nigeria. His parents are deceased. (GEs 1, 2.) The record contains no information about Applicant's employment or activities between August 1976 when he graduated from high school and March 1990, when he began working as a visa clerk for the U.S. government in Nigeria. (AE F.) He was granted a confidential security clearance for his duties for the U.S. State Department, although he does not now recall the date. (GE 1.)

In January 1995, Applicant married a Nigerian native citizen. Applicant and his spouse have two sons, now ages 30 and 25 and two daughters, now ages 33 and 23,

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<sup>3</sup>Applicant advised me on April 14, 2016, that he had resigned and relocated to be with his family because of his daughter's health issues. He had sought a job transfer with the defense contractor, but there are no openings currently in his new location. Applicant expressed intent to apply for positions which require a DOD security clearance. Given Applicant apparently held a clearance (Tr. 26), there is a basis to proceed to a final decision on his security clearance eligibility.

who were born and raised in Nigeria. Around August 2001, the older daughter came to the United States on a student visa for university studies. (GEs 1, 2.)

For his hard work and dedication in support of the U.S. mission in Nigeria, Applicant earned awards and promotions to consular assistant and then visa specialist. In December 2006, Applicant resigned from his employment with the U.S. State Department in Nigeria after he was granted a special immigrant visa by the State Department with the strong recommendation of the U.S. mission in Nigeria. (AEs D, F, G, I; Tr. 46.) In mid-January 2007, Applicant, his spouse, and their children came to the United States. Applicant entered the United States on a Nigerian passport issued on May 28, 2002 and valid for five years. (GEs 1, 2.) In May 2007, the passport office in Nigeria renewed Applicant's Nigerian passport for another five years. (GE 1.)

Applicant was unemployed during his first year in the United States. During his application for contract employment for the U.S. State Department, Applicant was interviewed on July 19, 2007, by an investigator for the State Department about his Nigerian family members. Applicant provided identification, address, and occupational information for his four brothers, his four sisters, and his three brothers-in-law, all resident citizens of Nigeria. Brother #1 was 38 and a self-employed photographer. Brother #2 was 33 and self-employed as a building materials supplier. Brother #3 was 25 and unemployed. Brother #4 was 23 and a student. Sister #1 was 47 and a self-employed trader. Sister #2 was 32 and a banker.<sup>4</sup> Sister #3 was 27 and unemployed. Sister #4 was 22 and a student. Brother-in-laws #1 and #2 were 41 and 39, respectively. Both worked for the same bank in Nigeria but at different locations. Brother-in-law #3 was turning 29 within a week and was unemployed. Applicant advised that while his spouse was a citizen of Nigeria, she was a U.S. permanent resident. Applicant denied any foreign financial interests or activities on behalf of foreign entity. (GE 2.)

Applicant was re-interviewed on September 20, 2007, about the visa and citizenship status of the elder of his daughters. Applicant indicated that his daughter had entered the United States on a student visa in September or October 2001, and that her student visa, reissued in December 2003, had expired in December 2005. Applicant provided proof of her current student enrollment at a university in the United States as of September 2006. He explained that she was arranging for a college internship to complete her degree, and that he filed for U.S. permanent residency for her in September 2007. (GE 2.)

In December 2007, Applicant began working as a federal contract employee in visa processing for the State Department. He rented an apartment near his work while his family stayed behind in his previous locale with a warmer climate. (GE 1; Tr. 105.)

Applicant took the oath of naturalization in the United States in mid-April 2012. Three days later, he was issued his U.S. passport. Applicant's acquisition of U.S. citizenship did not automatically revoke his Nigerian citizenship, and in late November

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<sup>4</sup> Applicant testified at his hearing that this sister works as a bank teller. (Tr. 99-100.)

2012, Applicant was issued an Economic Community of West African States (ECOWAS) passport valid until November 29, 2017, by the Nigerian Consulate. (GE 1; AE L.) Applicant had heard from friends who experienced “a hard time at the airport” when entering Nigeria on a U.S. passport. (Tr. 69.) Given the travel issues at airports in Nigeria, he obtained an ECOWAS passport “as a document of convenience.” (Tr. 52.) He assumed it was permissible because in his work at the U.S. Embassy in Nigeria, he had seen dual nationals with both U.S. and Nigerian passports. (Tr. 69-70.)

In May 2014, Applicant’s then employer lost the contract to process visas. Applicant applied to work for the company that acquired the contract, and on May 30, 2014, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (QNSP). Applicant responded “Yes” to an inquiry about whether he had ever held dual citizenship and indicated that he held Nigerian citizenship from birth to present. He discrepantly responded “Yes” to whether he had taken any action to revoke his foreign citizenship and explained, “Was renounced at the time of U.S. citizenship oath ceremony.” Applicant disclosed that he held a Nigerian passport that was not scheduled to expire until November 29, 2017, although he denied any foreign travel on that passport. Applicant provided only Nigeria as the country of citizenship for his spouse, and yet also indicated that his spouse possesses a U.S. naturalization certificate. As for his children, they are U.S. resident aliens with Nigerian citizenship. He indicated that the elder of his two daughters has an approved 1-130 petition (petition for alien relative). Applicant provided identifying information for seven of his eight siblings, all resident citizens of Nigeria.<sup>5</sup> He listed monthly contact by telephone with six of these siblings and quarterly contact by telephone with his 36-year-old sister. Applicant responded negatively to inquiries concerning foreign financial interests except for whether he had ever provided any financial support for a foreign national. Applicant disclosed that he provided \$1,250 two or three times a year to his two youngest siblings, who were students. As for any foreign travel in the last seven years, Applicant listed one trip, which was to Nigeria in March 2010. (GE 1.)

Applicant was hired by the federal contractor, and he started working for the company in June 2014 as a research analyst. (AE H.) On July 8, 2014, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He expressed willingness to relinquish his ECOWAS/Nigerian passport if necessary as a condition of his access. (Tr. 79.) With the issuance of the SOR in January 2015, Applicant learned about the potential security risk posed by his possession of a valid Nigerian passport. Applicant sought information from the Nigerian Consulate in March 2015 about surrendering his “ECOWAS passport.” (AE J.) Other than being advised that his inquiry had been received and would be forwarded, Applicant received no response despite repeated requests. (AE K; Tr. 54, 68.)

In response to reported advice from DOHA, Applicant emailed his facility security officer (FSO) on March 3, 2016, about surrendering custody of his foreign passport to the FSO. She advised him that the company would not accept a surrendered passport,

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<sup>5</sup> Applicant did not include one brother, who is now 34 years of age. As of 2007, this brother was unemployed. (GE 2.)

as a matter of company policy, although she recommended that he contact the U.S. State Department or the Nigerian Embassy. (AE K.) Applicant did not want to just mail in his foreign passport to Nigerian authorities without knowing who would receive it and possibly not receiving any confirmation of its receipt. (Tr. 69-71, 85.) At his security clearance hearing, he expressed willingness to relinquish his ECOWAS/Nigerian passport. (Tr. 80.)

After his hearing, Applicant applied to renounce his Nigerian citizenship, and he surrendered his ECOWAS passport issued by the Federal Government of Nigeria to the Nigerian Consulate. Nigerian consular officials cancelled Applicant's passport and forwarded it to Nigeria. Applicant subsequently resigned from his employment with the federal contractor due to his daughter's health issues. (AE L.)

Applicant has no financial assets in Nigeria. (GE 1; Tr. 75.) Applicant has ongoing contact by telephone with his siblings in Nigeria, although he does not talk to all of them every month. It depends on which sibling calls or who he calls because he has not heard from his sibling. (Tr. 58-69.) Applicant has never corresponded with his siblings in Nigeria by email. (Tr. 61.) He has not traveled to Nigeria since becoming a U.S. citizen. (Tr. 69.) Applicant has not sent any financial support for brother #4 or sister #4 since 2014. (Tr. 76-77, 89.) They are no longer in school in Nigeria. (Tr. 78.) None of Applicant's relatives in Nigeria has had any affiliation with the Nigerian government. (Tr. 78-79.) Brother #3, who had been unemployed, now works as a laborer. Brother #4 recently completed one year of National Youth Service after graduating from college. (Tr. 94-96.) Applicant last talked to his youngest brother in January 2016. (Tr. 97.) Sister #4 finished college around October 2015 and married in December 2015. Applicant last contacted her around the time of her wedding. Sister #4's husband works for his church. (Tr. 98.) Applicant last spoke with sisters #1 and #2 and brother #1 sometime between October 2015 and January 2016. He did not have any contact with brother #2, brother #3, or sister #3 at that time or since then. (Tr. 100-101.) As of March 2016, Applicant's siblings in Nigeria knew nothing about his employment in the United States. (Tr. 91.)

Applicant's two sons and his younger daughter are U.S. permanent residents with Nigerian citizenship. (Tr. 75, 92.) His older daughter's paperwork for U.S. permanent residency is in process. (Tr. 92, 101.) Applicant's spouse became a U.S. naturalized citizen in 2013. (Tr. 92.)

## **Character and Work References**

Former supervisors and co-workers familiar with Applicant's service for the U.S. State Department in Nigeria attest to Applicant's hard work and dedication, including during times of political disturbance. He demonstrated loyalty, trustworthiness, and a high degree of integrity in carrying out his duties, at times risking his own safety to report to the Embassy for work. (AEs D, F, G.) Applicant's loyalty to the United States earned him the nickname of "Mr. America." (AE F.) Applicant earned the respect of his then immigration chief at the U.S. Consulate for his expertise and dependability. He was successful in detecting deception in a post that regularly faced corruption and fraud. (AE

I.) Now retired from the U.S. State Department, she attests to Applicant's pride on his U.S. naturalization. She believes that Applicant would not have obtained a Nigerian passport if he thought it would be a problem, and explained that Nigerians travel to Nigeria with a Nigerian passport to avoid the difficulties those Nigerians with U.S. passports face, including "shake-down" at customs for money. Citing Applicant's consistent employment on behalf of U.S. interests and his personal sacrifice in being away from his family for eight years in the United States, she does not believe that Applicant has divided loyalties or that he can be coerced by foreign interests. (AE D.)

Applicant also demonstrated commitment, integrity, and excellence as a research analyst for the federal contractor that sponsored him for security clearance until his recent resignation for family issues. He was rated as a "valued performer" for his performance during his first year. (AE H.) In March 2015, his employer expressed its appreciation for his dedication and hard work. (AE A.) A co-worker witnessed Applicant's pride and happiness on becoming a U.S. citizen. In his experience, Applicant could always be counted on to produce work of the best quality. (AE C.)

### **Administrative Notice**

Nigeria is the most populous nation in Africa. Despite its oil wealth, the country is highly underdeveloped and is mired in poverty. Poor governance and corruption have limited infrastructure development and social service delivery, hindering economic growth. Among Nigeria's 250 ethnic groups, the mostly Muslim Hausa and Fulani are dominant in the northern two-thirds of the country. Twelve northern states have formally adopted Islamic sharia law to adjudicate criminal and civil matters for Muslims. Southern Nigeria is predominantly Christian.

Nigeria has experienced periods of political instability, with conflict along ethnic and geographic lines and dominated by military coups, since gaining its independence from Britain in October 1960. After 16 years of consecutive military rule, Nigeria transitioned in May 1999 to a civilian, democratic form of government, led by President Olusegun Obasanjo. With the inauguration of a civilian president, the U.S.-Nigerian relationship began to improve, as did cooperation on foreign policy goals such as regional peacekeeping.

On April 16, 2011, Goodluck Jonathan, a Southern Christian, was elected to a four-year term in a presidential election generally considered to be credible and orderly by international observers, but election-related violence was higher than in previous years. The opposition candidate, a northern Muslim, unsuccessfully challenged the election. In 2015, Nigeria saw its first successful democratic transfer of power from a sitting president in the election of its current president Buhari.

A militant sect, Boko Haram, continues to perpetrate killings and bomb attacks predominantly against soft targets in northern Nigeria but periodically throughout the country, and with increasing frequency since 2009. The sect claimed responsibility for three bombings in the capital Abuja in 2011, including of the United Nations

headquarters on August 26, 2011, which marked a major departure from its previously exclusive focus on domestic targets. Boko Haram was designated as a Foreign Terrorist Organization by the U.S. State Department in November 2013. In 2014, Boko Haram expanded its attacks primarily in 10 northern states. Boko Haram has caused nearly 5,000 deaths, many injuries, tens of thousands of displaced civilians, and significant destruction of property. In April 2014, Boko Haram kidnapped more than 275 female students from a secondary school. Three northeastern states were under a state of emergency from May to November 2014, which gave the Nigerian government additional authority to prosecute a military campaign against Boko Haram. On October 17, 2014, the Nigerian government announced it reached a cease-fire agreement with Boko Haram, but fighting continued. Northeastern Nigeria remains the epicenter of Boko Haram activities, but the group has taken responsibility for attacks in Jos, the Federal Capitol Territory, and Lagos.

The most serious human rights abuses in Nigeria are committed by Boko Haram. In response to Boko Haram and to crime in general, security services in Nigeria have perpetrated extrajudicial killings and engaged in torture, rape, arbitrary detention, mistreatment of detainees, and destruction of property. Nigeria's heavy-handed response to Boko Haram's insurgent and terrorist operations has complicated U.S. efforts to pursue greater counterterrorism cooperation with the Nigerian government. Corruption and mismanagement in the Nigerian security sector have constrained the Nigerian government's response. The country also suffers from widespread societal violence, including ethnic, regional, and religious violence. Other serious human rights abuses include denial of fair public trial; harsh and life threatening prison conditions; executive influence on the judiciary; arbitrary interference with privacy; and restrictions on some civil liberties. Impunity was widespread at all levels of government. The government has brought few persons to justice for abuses and corruption. Laws prohibiting discrimination, societal abuses, and trafficking in persons, have not been effectively enforced.<sup>6</sup>

The U.S. State Department currently recommends that U.S. citizens avoid all travel to three states in the north of the country due to the risk of kidnappings, robberies, and other armed attacks. Boko Haram is known to descend on whole towns, robbing banks and businesses, attacking police and military installations, and setting fire to private homes. Attacks by Boko Haram and clashes with Nigerian government security forces increased in northern Nigeria in 2015. As of February 2016, the U.S. State Department was reporting that U.S.-Nigerian dual nationals are now required to have a valid Nigerian passport in order to depart the country.

Nigeria is a member of several international organizations, including the United Nations, International Monetary Fund, World Bank, and World Trade Organization. Nigeria is an observer to the Organization of American States. Southern Nigeria's economy, centered in Lagos, is among the fastest growing in the world, and presents a sharp contrast to northern Nigeria, where stagnation and endemic poverty prevail. The

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<sup>6</sup> On February 5, 2016, before Applicant's hearing, the State Department updated its travel warning for Nigeria.

United States is the largest foreign investor in Nigeria with U.S. foreign direct investment concentrated largely in the petroleum/mining and wholesale trade sectors. Nigeria is eligible for preferential trade benefits under the African Growth and Opportunity Act. The United States seeks to improve the economic stability, security, and well-being of Nigeria by strengthening its democratic institutions, improving transparency and accountability and professionalizing its security forces.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant’s eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B—Foreign Influence**

The security concerns about foreign influence are set out in 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.

Applicant’s children have only Nigerian citizenship. His sons and younger daughter are U.S. permanent residents. Apparently, his older daughter’s application for U.S. residency is pending, even though she has been in the United States since 2001 when she came on a student visa. When Applicant was interviewed by a State Department investigator in 2007, he indicated that his daughter’s student visa expired in December 2005, but he provided proof that she was still enrolled at a U.S. university. On his May 2014, he indicated about his daughter’s legal status, “has approved 1-130 petition pending.” Some concerns arise about her legal status in the United States. However, there is there is no evidence that any of his children travel to Nigeria or have contact with family members in Nigeria. The risk of undue foreign influence because of his children’s Nigerian citizenship is minimized by the fact that they live in the United States.

Applicant’s siblings are resident citizens of Nigeria. Applicant may reasonably be expected to have some contact with, and feelings of affection or obligation for, the family members that he left behind in Nigeria. Applicant has contact with his siblings by telephone monthly to less frequently, depending on the sibling and whether there is a special family occasion, such as a wedding, or events that have led him or his siblings to inquire about the well-being of family members. Before May 2014, Applicant also provided financial support averaging \$1,250 annually to both his youngest brother and his youngest sister for their college studies in Nigeria. Two disqualifying conditions under AG ¶ 7 apply primarily because of Applicant’s ties to his siblings in Nigeria:

(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.

The salient issue under AG ¶ 7(a) and ¶ 7(b) is whether there is substantial evidence of a "heightened risk" of foreign influence or exploitation because of the respective foreign tie, contact, or interest. The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country, but it is nonetheless a relatively low standard. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to coercion. Even friendly nations may have interests that are not completely aligned with the United States. As noted by the DOHA Appeal Board, "the United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; a family member is associated with, or dependent on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Concerning the nature of the Nigerian government, there is no evidence that intelligence operatives from Nigeria seek classified or economic information from U.S. businesses. Yet, with its negative human rights record and high levels of corruption and other crime, it is conceivable that anyone living in Nigeria might be targeted by governmental or non-governmental criminal elements in an attempt to gather information from the United States. While none of Applicant's family members in Nigeria was shown to work for the Nigerian government, Applicant's work in the past on behalf of the U.S. government in Nigeria makes it difficult to completely dismiss the risk of them being targeted. Nigeria is not known to sponsor terrorism, but terrorist elements in Nigeria, such as Boko Haram, have injured or killed thousands of Nigerians through multiple attacks against government, military, and civilian targets. Most of these attacks have occurred in the northern states rather than in southwest Nigeria, where his relatives reside. Nonetheless, Department Counsel produced substantial evidence of Applicant's personal contacts and relationships with Nigerian resident citizens to raise the risk of coercion, pressure, or attempted exploitation. Applicant has telephone

contact on an ongoing basis with his siblings. Moreover, a sense of obligation for his family members in Nigeria is apparent in his financial support for his youngest siblings' educations. Further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8(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.," is difficult to satisfy. There is ongoing terrorist activity by extremist elements in Nigeria, and the country has a poor human rights record, which includes serious abuses committed by security forces.

Applicant indicated on his May 2014 SF 86 that he had monthly contact with seven of his eight siblings and that he had quarterly telephone contact with sister # 3. As of March 2016, he had ongoing contact, although not every month with each sibling. Contact is around family occasions or other events that would generate reasonable concern about the well-being of family members. Applicant has not seen his family members in Nigeria since his last trip in 2010. Even if his contact with his siblings is relatively infrequent, it cannot reasonably be characterized as casual in light of his feelings of affection for his siblings. AG ¶ 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," does not apply.

Applicant has not demonstrated a particular affinity for Nigeria, despite his retention of Nigerian citizenship after his naturalization in the United States. He provided meritorious service in consular affairs for the United States in Nigeria for 16 years before immigrating to the United States in January 2007. However, his sense of loyalty or obligation to his siblings in Nigeria is not so minimal to qualify for mitigation under the first component of AG ¶ 8(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."

Key to the AG ¶ 8(b) analysis in this case is whether Applicant has established "deep and longstanding relationships and loyalties in the U.S." Applicant has lived in the United States permanently only since January 2007, while he spent 49 years in his native Nigeria. However, character references, including from a former immigration chief for the U.S. State Department in Nigeria, attest to Applicant demonstrating a commitment to the United States well before his emigration from Nigeria. Applicant earned the nickname "Mr. America" for his loyalty and commitment to his duties on behalf of the United States. Because of his meritorious service, Applicant was granted a special immigration visa by the United States. Since immigrating, Applicant has continued to contribute to U.S. interests by working on visa issues as a contractor employee from December 2007 to March 2016, at significant personal sacrifice to himself and his family in time spent apart. Applicant became a naturalized U.S. citizen in

April 2012. His U.S. naturalization did not revoke his Nigerian citizenship, although in response to an SF 86 inquiry concerning whether he had taken any action to renounce his Nigerian citizenship, Applicant responded that his Nigerian citizenship “was renounced at the time of [the] U.S. citizenship oath ceremony.” Applicant made no effort to reconcile this statement with his acquisition of an ECOWAS passport from the Nigerian Consulate in November 2012. Even if he thought of himself solely as a citizen of the United States, he had to know that Nigeria considered him a citizen if it granted him a passport. Renewal and possession of a foreign passport raises some concerns about the strength of his ties to the United States, even if he renewed the passport for convenience, to avoid any problems traveling to Nigeria to see family members in the future. However, on learning that his foreign passport raises security issues, Applicant not only surrendered his foreign passport, but he also applied to renounce his Nigerian citizenship. He has no financial assets in Nigeria, and his ties to the United States appear to be permanent. I am persuaded that Applicant can be counted on to act in U.S. interests in the event of any undue foreign influence on his siblings in Nigeria.

### **Guideline C—Foreign Preference**

The security concern relating to the guideline for foreign preference is articulated in AG ¶ 9:

When 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.

As of the close of the evidentiary record, Applicant held dual citizenship with his native Nigeria, and albeit relatively recently, of the United States by choice. Retention of foreign citizenship acquired from birth out of respect for one’s ethnic heritage, for example, is not disqualifying in the absence of an exercise of a right, privilege, or obligation of that citizenship. See AG ¶ 11(a), “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” Applicant became a naturalized U.S. citizen in April 2012, and shortly thereafter, his Nigerian passport expired. However, apparently while visiting his family in November 2012, he went to the Nigerian Consulate and obtained an ECOWAS passport. He has not traveled on that passport as a U.S. citizen. Even so, his possession of a valid foreign passport after his naturalization in the United States raises significant issues of foreign preference under AG ¶ 10(a):

(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.

Dual citizenship is not encouraged by the United States because of the competing obligations that could arise. Applicant expressed willingness to relinquish his foreign passport when he was interviewed by an OPM investigator in July 2014. After

the SOR was issued, Applicant notified the Nigerian Consulate in March 2015 that he wanted to return his ECOWAS passport. Eventually, after conferring with DOHA, he tried unsuccessfully to surrender his foreign passport to his FSO in early March 2016. Sometime in April 2016, he relinquished his passport to the Nigerian Consulate and submitted his application to renounce his Nigerian citizenship. AG ¶ 11(b), “the individual has expressed a willingness to renounce dual citizenship,” and AG ¶ 11(e), “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated,” apply in mitigation of the foreign preference concerns.

### **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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).<sup>7</sup>

Applicant showed that he could be counted on to act in U.S. interests when he was working in a difficult and very busy section of the U.S. Embassy and then Consulate in Nigeria. He risked his personal safety in times of crisis to report to work at the Embassy. He demonstrated a similar commitment to the U.S. government by working in visa processing in the United States for the past eight years.

In weighing the whole-person factors in a foreign influence case, the Appeal Board has held that:

Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. See ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002).

There is nothing untoward about Applicant’s contacts with his siblings in Nigeria. While he understandably is concerned with their well-being, his relationship with his siblings does not appear to be especially close. His siblings have never visited him in

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<sup>7</sup> The factors under AG ¶ 2(a) are as follows:

(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.

the United States, and he has not traveled to Nigeria since March 2010. Applicant shared no information about his federal contractor employment with his siblings in Nigeria. Applicant's recent surrender of his foreign passport and his efforts to renounce his Nigerian citizenship show his willingness and ability to comply with security requirements. For the reasons stated above, I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

### **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 B:           FOR APPLICANT

    Subparagraphs 1.a-1.d:   For Applicant

Paragraph 2, Guideline C:           FOR APPLICANT

    Subparagraph 2.a:           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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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Elizabeth M. Matchinski  
Administrative Judge