

DATE: September 9, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-27287

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Brian J. Farrell, Esq.

SYNOPSIS

Applicant filed a false W-4 withholding certificate with his current employer claiming he was legally married when he was single. He also listed on records for medical benefits filed with a former employer that he had an eligible dependent daughter, aware he was not the child's father. Of Nigerian ethnicity, Applicant has a sister and a brother who reside in Nigeria and his parents own a home there. In June 2002, he married a Nigerian citizen. Potential foreign influence concerns are mitigated by his parents' residency in the US since 1988, his father's acquisition of US citizenship in July 2002, his spouse's residency and employment in the US, and his siblings in Nigeria being neither agents of a foreign power or in positions of likely vulnerability to undue coercion, pressure, or influence. Personal conduct concerns persist because of his deliberate falsifications. Clearance is denied.

STATEMENT OF THE CASE

On December 14, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on personal conduct (Guideline E) and foreign influence (Guideline B) concerns.

With the aid of legal counsel, Applicant on January 2, 2003, responded to the SOR allegations and requested a hearing before a DOHA administrative judge. The case was assigned to me on March 17, 2003. By letter dated April 24, 2003, the attorney originally retained by Applicant withdrew his appearance. On May 2, 2003, a formal notice was issued to Applicant scheduling the hearing for May 21, 2003. On May 14, 2003, newly retained legal counsel entered his appearance on behalf of Applicant.

At the hearing, which was held as scheduled, the Government's case consisted of seven exhibits and the testimony of the Defense Security Service (DSS) agent who interviewed Applicant in 2001. At the Government's request, official notice was taken of a U.S. Department of State country report on human rights practices in Nigeria for 2002, and a recent travel warning for Nigeria originally issued by the State Department's Bureau of Consular Affairs on August 8, 2002. Applicant presented three exhibits, which were entered without objections, and Applicant and his brother testified on Applicant's behalf. DOHA received the transcript of the hearing on June 3, 2003.

FINDINGS OF FACT

The SOR was issued under personal conduct concerns related to claiming falsely: 1) on a W-4 income tax withholding allowance certificate of April 30, 2001, that he was married at that time; 2) on forms for medical coverage submitted to a former employer that he had a daughter; 3) during DSS interviews in July and October 2001 that the mother of his son and his son lived at an address in the US other than their real address; and 4) on an April 1997 apartment rental application that his brother rather than he was to reside in the apartment--a brother whom he failed to list on his security clearance application (SF 86). Also alleged in the SOR were foreign influence concerns because of: 1) the Nigerian residency of his son and close associates/family members who care for him, with financial support from Applicant of \$200 quarterly; 2) the Nigerian citizenship of his parents and their ownership of a residence in Lagos; and 3) foreign travel by Applicant to Nigeria in 1995 and December 2000, and his stay when there in a house owned by his parents. Applicant denied the personal conduct allegations, excepting his failure to list his brother on his SF 86 which he attributed to neglect. Of the foreign influence concerns, he admitted his parents' ownership of a home in Lagos, and his stay there on his foreign travel to Nigeria in 1995 and 2000. He denied the remaining Guideline B allegations. Applicant's admissions are accepted and incorporated as findings of fact. After review and consideration of the evidence of record, I make the following additional findings of fact:

Applicant is a 31-year-old engineer, employed by a defense contractor (company A) since April 2001. Applicant previously worked for the defense firm from about June 1990 to June 1995 as a welder, and held a clearance during that time. He seeks a secret clearance for his present duties.

Applicant was born in the US with his twin brother in February 1972 to citizens of Nigeria. In 1977, Applicant's parents had a daughter. After Applicant's father acquired his M.B.A. degree from a university in the US, Applicant's father moved the family to Nigeria in 1979, where his father worked for a government-owned oil company. Two additional children were born to Applicant's parents in Nigeria, a daughter in about 1980 and a son in 1984. In 1988, Applicant and his parents returned to the US where they have since resided.

In April 1990, Applicant entered a welder apprenticeship program at company A. He completed the program, and from April 1992 to June 1995 worked as a first class shipfitter until he was laid off. Over the next two years, Applicant pursued his associate's degree at a local community college taking short-term temporary work when available. In March 1994, a son was born to Applicant and a woman (Ms. B) with whom he was romantically involved.

Circa July 1995, Applicant was charged with simple assault (domestic) following a disagreement with Ms. B that got out of hand. Applicant was placed on one year probation with counseling and ordered to have no contact with the mother of his son. Applicant's contact with his son thereafter was through his church as an intermediary.

In January 1995, Applicant traveled to Nigeria on a US passport to see his younger brother and sister. He stayed in a residence owned by his parents in Lagos.

After some time residing with his twin brother who was employed at a local hospital as an operating room technician, Applicant by April 1997 wanted his own place. Concerned he would not be able to rent an apartment as an unemployed student, Applicant asked his brother whether he could lease an apartment using his brother's name and employment. With the agreement of his brother, Applicant completed a rental application in his own hand in April 1997 under his brother's name, social security number, address, and employment, although he gave the rental agent a check for the deposit and rent in his own name. Applicant did not inform the lessor that he was not the person identified on the rental application. Applicant's brother never had any intention to reside in the unit and he did not move in with Applicant. [\(1\)](#)

In December 1997, Applicant went to work as a laboratory technician for a local chemical company. On documentation presented to this employer, Applicant listed as a dependent eligible for medical benefits a girl born to a woman (Ms. C) with whom he had a sexual relationship during the early 1990s, even though he was sure he was not the girl's father since his relationship with Ms. C had terminated more than a year before the girl's birth.⁽²⁾ Not required to document paternity, Applicant listed the girl as a dependent to appease Ms. C, who had lost her job and medical coverage. While Applicant now claims he believed then he was the girl's father based on the mother's assertions of his paternity (Tr. pp. 87, 135), he told a DSS agent in November 2001 that he disputed he was her father. Consistent with his denial of paternity, he never listed the girl as a dependent on any income tax returns. In May 2000, Applicant left the employ of the chemical company to pursue his bachelor of science degree full-time at the state university.

Applicant traveled to Nigeria in late December 2000, again to see his siblings. He stayed at the family's home in Lagos.

While still a student at the university, Applicant applied to return to work at company A. In conjunction with his application for reemployment, Applicant executed a Questionnaire for National Security Positions (QNSP) on March 15, 2001. On his application, Applicant noted his current marital status as "never married." Concerning relatives and associates, Applicant listed the Nigerian citizenship and US residency of his parents, and the US citizenship and residency of the sister born in 1977 and his son born in 1994. Applicant did not list those siblings living in Nigeria, his twin brother in the US, or his girlfriend (Ms. D)--a Nigerian citizen with whom he was cohabiting--even though question 14 requires the disclosure of all siblings, all foreign nationals, and adult cohabitants. An electronic version of the security clearance application (SF 86) was prepared on April 3, 2001, and submitted to the Department of Defense containing the information disclosed by Applicant on the March 15, 2001, QNSP.

On April 30, 2001, Applicant executed an Employee's Withholding Allowance Certificate (W-4). Under penalties of perjury, he checked off the block for married and claimed two allowances. He and Ms. D were cohabiting, but not legally married. Applicant denies any intent to defraud, maintaining he and his future wife were in a common law marriage and he was supporting her. Asked to explain the discrepancy between his claim of single status on his SF 86 completed only weeks before and his W-4, Applicant responded he left his then girlfriend off the SF 86 because the federal government might not recognize common law marriage. (See Tr. p. 145). The W-4 form is also a federal (IRS) form. Applicant's claim of an additional allowance based on marriage is found to have been knowingly fraudulent.

From April 2001 to September 2002, Applicant's son lived in Nigeria with his maternal great-grandmother. Applicant's mother paid for the plane ticket to Nigeria for her grandson. While Applicant's son was staying in Nigeria in 2002, Applicant sent financial support for his son in the amount of \$200.00 quarterly through his church.

Applicant was interviewed twice in July 2001 by a DSS special agent. During his initial interview, Applicant was asked about the rental application he had completed for an apartment in April 1997. Applicant initially told the agent the application was for an apartment that his twin brother had lived in. He then admitted he had used his brother's information to lease the apartment for himself, as he was not sure he would qualify as a renter given his status as an unemployed student at the time. Applicant provided a sworn statement in which he denied any intent to falsify his application for the rental unit, indicating that his twin brother "once in awhile" stays at the apartment for a few days. Applicant and the agent discussed his son, whom Applicant indicated he supported financially. Applicant denied that he had any other children. Asked about the address of Ms. B, the mother of his son, Applicant provided an address that the DSS agent subsequently determined did not exist. He had no direct contact with her so Applicant relied on information provided by others that proved to be incorrect. A week after the first interview, the agent and Applicant met to discuss foreign connections and foreign travel. At that time, Applicant presented his US passport to the agent, which reflected trips to Nigeria in 1995, which Applicant indicated was to visit his twin brother who was there on vacation, and in 2000. Applicant told the agent he showed his son around his ethnic homeland during the recent visit.⁽³⁾

Sometime after his July 2001 interviews of Applicant, the DSS agent, through Applicant's employer, obtained from Applicant another address for Ms. B. The DSS agent was unable to find anyone at the address (an apartment complex) who knew of her. On November 27, 2001, the DSS agent met with Applicant to discuss the whereabouts of Ms. B and his son. Applicant was unable to identify the apartment of Ms. B from a diagram prepared by the agent. Applicant informed the agent that his son was in Nigeria, but he was unable to provide an address. Applicant indicated it had been a long time since he provided any support for his son. In response to the agent's inquiry, Applicant again denied he had

any children other than his son. In possession of the record from Applicant's former employer where he claimed the daughter of Ms. C as a dependent, the agent asked Applicant why he had listed the girl as a dependent. Visibly shaken at the agent's inquiry, Applicant denied he was the girl's father but indicated she was his Goddaughter. He admitted he had been in a relationship with Ms. C, and explained she had been involved in heated discussions with him. To appease her, he listed the girl as a dependent, but had never filed any medical claims for benefits for her. At Applicant's request that the investigation be discontinued, the interview was terminated prematurely after the agent explained the possible ramifications of his failure to cooperate.

On June 11, 2002, Applicant was reinterviewed by the DSS agent, this time about his foreign connections. During that interview, Applicant provided an address for his son in Nigeria--which he maintains he obtained from his sister who lives in Nigeria--and indicated he was supporting his son at the rate of \$200.00 quarterly. He identified by name and address those foreign relations residing outside the US (sister, brother, son's guardian) and within the US (his parents). Applicant did not include in that listing Ms. D, who he married on June 8, 2002, even though his spouse is a Nigerian citizen. He again denied paternity of Ms. C's daughter, and explained he listed the girl on medical forms at his previous employer because Ms. C asked him to. He indicated his belief he was not making a false claim as he had a family plan which included him, his son, and Ms. C's daughter. Applicant related he had claimed only his son as a dependent on income tax returns. Applicant attributed his termination of his November 2001 interview to rumors at his place of employment regarding his loyalty and citizenship and to his belief that the confidentiality of the investigation had been compromised.

Since September 2002, Applicant's son has resided with the boy's mother (Ms. B) in the US. Applicant sends messages as well as clothes to his son through the church.

On or about March 22, 2003, Applicant and his spouse completed joint federal and state income tax returns for tax year 2001 even though they were not legally married during tax year 2001. Applicant submits he is entitled to file a joint return for that year as he was married when he filed the return in 2003. He provided no reason for his failure to timely file the 2001 returns.

Applicant traveled to Nigeria in March 2003 to see his younger siblings. His sister currently attends medical school in Nigeria; his brother attends college. They reside in the family home in Lagos which is owned by their parents. Applicant stayed with them during his three-week visit.

In July 2002, Applicant's father became a US citizen through naturalization. His mother remains a resident alien in the US, although she is pursuing US citizenship. Applicant has telephone contact with his father weekly and his mother daily. Applicant has contact with his twin brother either by telephone or in person once per week. Applicant's other sister is on active duty in the United States military.

Applicant's spouse is a Nigerian citizen who was a family friend. She came to the US in about 1995 and has lived with Applicant since about 1998. As of May 2003, she was employed in a bank.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent guidelines in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified

if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. See Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Personal Conduct

E2.A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material 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;

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;

E2.A5.1.2.5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency.

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

Foreign Influence

E2.A2.1.1. The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation or pressure.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

E2.A2.1.2.2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists

E2.A2.1.3. Conditions that could mitigate security concerns include:

E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States.

Under Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's clearance

may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the SOR. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance. A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the following with respect to Guidelines E and B:

Applicant has a record of deliberate false statements and omissions that reflects adversely on his judgment, reliability, and trustworthiness and creates serious personal conduct (Guideline E) concerns. He applied for a rental apartment in April 1997, using his brother's name, social security number, and employment. Although Applicant paid for the deposit and rent with checks issued in his correct name, his tenancy was approved based on information that Applicant knew was false. That he had his twin's authorization for the misrepresentations does not render his conduct any less dishonest. When confronted by the DSS agent with the false rental application, Applicant initially indicated falsely that the application was for an apartment that his twin brother had lived in. Applicant also succumbed to the pressure of an ex-girlfriend and falsely claimed paternity of her daughter so the girl would be eligible on his medical insurance policy through his employer during the late December 1997 to May 2000 time frame. Applicant's hearing testimony that he thought the girl was his daughter is directly contradicted by his repeated denials of paternity when interviewed by the DSS agent, and the fact that he never claimed this girl as a dependent on other forms (*e.g.*, tax returns or security clearance applications). More recently, when Applicant returned to work for the defense contractor, he fraudulently claimed he was married on the W-4 form, and therefore entitled to a second withholding allowance. While he and his spouse had been cohabitants since about 1998, he knew he was not legally married, as manifested by his indication on his SF 86 that he was single. Although not alleged by the Government, Applicant did not disclose on his March 2001 QNSP (or the electronic SF 86 prepared from the QNSP) that he was involved in a cohabitant relationship with a Nigerian citizen, who he now claims was his common law spouse. He listed only one of his three siblings on his application, concealing from the Government that he had relationships of affection with two younger siblings, both Nigerian resident citizens. Disqualifying conditions E2.A5.1.2.2. (deliberate omission, concealment or falsification of relevant and material facts from any personnel security questionnaire . . . or similar form), E2.A5.1.2.3. (deliberately providing misleading or false information to an investigator), and E2.A5.1.2.5. (pattern of dishonesty) are pertinent in this case.

The Government has alleged as well that Applicant deliberately provided false addresses to the DSS agent for his son's mother (Ms. B). A no contact order was entered against him following the domestic assault, and there is no proof he had any ongoing contact with Ms. B or even his son except through his church acting as an intermediary. By April 2001, Applicant was aware that his son had been taken to Nigeria by a family member of Ms. B, since Applicant's mother had paid for the boy's plane ticket. When interviewed in July 2001, Applicant provided an address for Ms. B that did not

exist. (4) Given the no contact order, it is conceivable Applicant would not know of her address. There is no proof he had any ongoing contact with Ms. B except through his church as an intermediary. Aware that his son had been taken to Nigeria by the boy's maternal great-grandmother in April 2001, Applicant notified the DSS agent in November 2001 his son was in Nigeria. Based on the evidence of record, I am unable to conclude that Applicant deliberately lied to the agent about Ms. B's whereabouts during his 2001 interviews. Subparagraph 1.c. is thus resolved in his favor.

With regard to those proven deliberate misrepresentations on his W-4 form, on his medical benefits documents filed with his previous employer, and on his 1997 rental application, Applicant has not met his burden in mitigation. He continues to demonstrate little appreciation for the need to be completely honest with the Government. When he completed his June 2002 sworn statement, he failed to include his spouse as a foreign national with whom he has a close relationship. It was not until the hearing that the Government learned Applicant had married a Nigerian citizen. In March 2003, Applicant filed a joint income tax return for tax year 2001 with his spouse, and claimed an exemption for her, even though they were not married at any time during the 2001 tax year. At his hearing, he claimed to have held a belief up to the time that he listed Ms. C's daughter as a dependent on medical benefit forms that he had fathered the girl. His recent claim is directly contradicted by his earlier statements to the DSS agent in June 2002 that he did not believe the girl was his daughter and had listed her as a dependent at the request of Ms. C who was unemployed at the time. Adverse findings are warranted as to subparagraphs 1.a., 1.b. and 1.d., Applicant having to overcome the security concerns caused by these knowingly false statements made in self-interest.

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation are not citizens of the United States or may be subject to duress. Although Applicant's father recently acquired US citizenship, he continues to own a home in Nigeria. Applicant's mother is a Nigerian citizen who has been a continuous resident of the US since 1988. At the hearing, the Government learned through the testimony of Applicant's twin brother that Applicant is married to a Nigerian citizen--a family friend who came to the US in about 1995 and has cohabited with Applicant since about 1998. Applicant clearly has close relationships with these family members. He speaks with his mother daily and his father once or twice weekly. It is reasonable to assume close and intimate contact in a spousal relationship. Furthermore, Applicant's younger sister and brother are resident citizens of Nigeria. Applicant described this sister as his "primary contact in Nigeria." Applicant stayed with his siblings in the family home when he traveled to Nigeria in 1995, late 2000, and March 2003. Disqualifying condition E2.A2.1.2.1., an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country must be considered in evaluating Applicant's security suitability.

The security concerns engendered by the foreign citizenship of close family members and associates may be mitigated where it can be determined that the immediate family member(s), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States (*see* E2.A2.1.3.1.). Evidence of record does not indicate that Applicant's family members have ever been agents of a foreign power, or that they are in a position to be exploited by a foreign power. Applicant's father worked for a government-owned oil company before 1988, but there is no evidence he has had any contact with foreign government officials since he moved to the US. Although they continue to own the home in Nigeria in which their two youngest children live, Applicant's parents have established significant ties in the US. His father acquired US citizenship in July 2002 and his mother is pursuing US citizenship. Their residency in the US greatly reduces the risk of undue foreign influence being placed on them. Applicant's siblings in Nigeria are students not engaged in any political activity. Although Applicant's son was in Nigeria from April 2001 to September 2002, the potential foreign influence concerns presented by his son's residency and close contact with Nigerian resident nationals are mitigated by the son's return to the US. Although not alleged by the Government, the risk of foreign influence because of Applicant's spouse's Nigerian citizenship cannot be ignored. However, she has been a resident of the US since 1995, and there is no indication of contact by her with foreign nationals. Given those to whom Applicant has the closest bond are all in the US, and he has clearly chosen the US over Nigeria to make his home and career, the risk of foreign influence is minimal, notwithstanding the Nigerian government has a poor human rights record. Subparagraphs 2.a., 2.b., and 2.c. are resolved in Applicant's favor.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline E: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: Against the Applicant

Paragraph 2. Guideline B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

DECISION

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

Elizabeth M. Matchinski

Administrative Judge

1. Applicant has denied any intent to defraud the lessor. On direct examination, he testified his brother had the occasion to reside in the apartment for a period of days. (Tr. p. 102). Applicant's brother did not confirm that he ever resided in the apartment. He testified he had no intent of going back to the apartment if his brother decided to rent it (Tr. p. 154), and did not indicate that he resided there with Applicant.
2. The agent reported in a certified results of interview (Ex.4) that the company's records listed the girl's birth as October 1995. Applicant indicated in a sworn statement of June 11, 2002 (Ex. 5), the girl was born in 1994.
3. Applicant's US passport is not of record. Applicant reports trips to Nigeria in January 1995 and from December 2000 to January 2001. There is no proof Applicant's son was in Nigeria prior to April 2001 when he went there with his maternal great-grandmother. It was not established that Applicant showed his son around Nigeria during the December 2000/January 2001 time frame.
4. It is not clear from the agent's testimony or his certified results of interview (Ex. 4) whether the agent in July 2001 asked Applicant specifically for his son's address or just Ms. B's. As of July 2001, Applicant was aware his son was not at the address that he listed on his QNSP. Applicant having revealed on his QNSP that he had a son out of wedlock and that he had been placed on probation for domestic assault, he had little reason to lie about Ms. B's address. Applicant should have indicated to the DSS agent he was relying on hearsay for the addresses, but his failure to do so does not prove intentional falsification.