

DATE: June 20, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-06378

DECISION OF ADMINISTRATIVE JUDGE

BURT SMITH

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's parents and seven siblings are citizens and residents of a country marked by civil and military unrest, organized crime, factional warfare, and impotent government. In this environment Applicant's access to classified information is likely to attract the attention of lawless elements that might exploit Applicant's family to force Applicant to choose between loyalty to his family and loyalty to the United States. Applicant's evidence to the contrary is not sufficient to offset or rebut this security concern. Clearance is denied.

STATEMENT OF THE CASE

On January 8, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR details 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 Applicant. It recommended referral to an Administrative Judge to determine whether a clearance should be granted or denied. In a written answer dated January 31, 2003, Applicant responded to the SOR, and he elected to have his case decided on the written record in lieu of a hearing.

A complete copy of the Government's File of Relevant Material (FORM) was provided to Applicant on April 3, 2003, and he was afforded thirty days to file objections and/or submit further material in refutation, extenuation, or mitigation. Applicant received the FORM on April 11, 2003, but he did not submit any information. The case was assigned to me on May 30, 2003.

FINDINGS OF FACT

Applicant is 43 years old, and he was born in Nigeria. He immigrated to the United States in 1982 because of military unrest in Nigeria. Applicant earned a masters degree in engineering in 1988, and in 1999 he became a naturalized American citizen. He is employed by a US defense contractor as a programmer. Applicant has never married. His

immediate family includes his parents, six brothers, and two sisters, all of whom are citizens and residents of Nigeria, except for one brother who resides in the United States.

The Government's evidence supports a finding that Nigeria is marked by serious instability and outbreaks of armed conflict between religious, political and ethnic factions. (FORM, Items 8,9.) Lagos, the city of Applicant's birth, regularly experiences civil unrest and violence. In 2002, ethnic clashes caused hundreds of deaths. In one oil-producing area, US citizens have frequently been threatened and held hostage. US consulate employees are required to use armored vehicles when traveling through certain sectors of the country. American citizens have experienced armed muggings, kidnaping, and extortion involving violence. US nationals often report harassment and shakedowns during encounters with Nigerian officials.

The country is home to sophisticated criminal organizations that operate on an international scale, primarily through schemes involving internet fraud, identity theft, and investment scams. Among local gangs, kidnaping for ransom remains common. The potential for personal danger is high in Nigeria, and US citizens are advised to avoid large crowds and maintain security awareness at all times. The Nigerian government is poorly equipped to investigate and prosecute lawless behavior, and criminals often operate with impunity. There exists little anti-US sentiment in Nigeria, but some elements have demonstrated against US policies in the Middle East.

Applicant's family is not wealthy, and they have no military or political connections although Applicant was a government technical worker during 1978-1982. Applicant contacts his parents once per month by mail and once per year by telephone. He occasionally sends his family money in undetermined amounts, but he has not visited them in seven years or more. Applicant has family rights to a house in Nigeria, but cultural restrictions prevent him from ever selling the house or transferring it outside of the family. Applicant has no other property or financial interests in Nigeria, except to act as US seller for art works created by his brother.

POLICIES

Enclosure 2 of the Directive, as amended by DepSecDef Memorandum dated June 7, 2001, sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. The guidelines are divided into those that may be considered in deciding whether to deny a security clearance (Disqualifying Conditions, hereafter DC) and those that may be considered in deciding whether to grant a clearance (Mitigating Conditions, hereafter MC).

Based upon a consideration of the entire record, I find the following adjudicative guidelines have application in this case:

Guideline B - Foreign Influence. *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.

Disqualifying Conditions applicable:

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

Mitigating Conditions applicable:

5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

The whole person concept. In addition to the above guidelines, the Directive provides in Para. E.2.2.1. that under the "whole person concept" the Administrative Judge shall consider nine specified factors related to a determination of Applicant's security worthiness.

Burden of Proof. The Government must prove all controverted facts that tend to demonstrate Applicant is ineligible for clearance. Applicant must overcome the Government's case by persuasive evidence in refutation, mitigation, or changed circumstances. However, Applicant always bears the ultimate burden of proving it is clearly consistent with the national interest to grant him or her access to classified information.

CONCLUSIONS

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted upon to safeguard it 24 hours a day. The Government is therefore appropriately concerned where reliable information indicates an Applicant for clearance may be subject to manipulation or duress due to foreign influence and/or foreign connections. On a commonsense basis, these circumstances might easily lead to a compromise of defense secrets because of coercion, conflicting loyalties, or foreign sympathies.

In this case, Applicant chose to immigrate to America in 1982, and seventeen years later he became a naturalized US citizen. Like many immigrants before him, Applicant worked hard to gain a sound education, and he has achieved success in the workplace as an engineer. Applicant's background information indicates he is a responsible citizen with a stable personal life.

Applicant leaves behind in Nigeria his parents and seven brothers and sisters who are citizens and residents of Nigeria. Therefore, DC 1 has application. The record reveals little about Applicant's family in Nigeria, although it is probably safe to conclude they are not wealthy and Applicant does not have a significant financial interest in Nigeria. MC 5 has application.

Nevertheless, it is clear that Applicant's family members reside in an environment in which wealth is often acquired through criminal means involving theft, fraud, violence, blackmail and banditry. Nigerian residents are subject to targeting by criminal elements searching for vulnerable victims who have access to anything of value that can be used, sold or bartered for monetary gain. This circumstance gives rise to a security concern in Applicant's case.

Classified information concerning US defense interests is eagerly sought by foreign nations willing to pay large sums of money to acquire it. In this sense, classified information is a valuable commodity in the hands of criminals, profiteers, and extortionists who know they can reap large sums by acquiring these secrets and selling them to interested agents. Because of Nigeria's weakly-governed and chaotic economic structure, Nigerian residents are especially vulnerable to the forcible taking of anything of value they may have, including indirect access to US classified information.

Applicant's access to classified information, if known, might easily become a subject of interest to Nigerian criminal elements seeking opportunities for financial gain. Applicant's family would be the first target for exploitation or duress intended to force Applicant to choose between loyalty to his family and loyalty to the United States. To be sure, this is not a situation of Applicant's making, and his feelings of national loyalty might be strong. However, in his response he presents no evidence that counters or opposes negative security conclusions that must be drawn from the Government's documents. The risk of a security compromise in these circumstances is too great for the United States to assume.

On balance, I conclude the Government has met its burden of proving all factual allegations in the SOR. For his part, Applicant has not introduced persuasive evidence in refutation, mitigation, or changed circumstances which offsets or outweighs the Government's case. In reaching these

conclusions, I have given consideration to the whole person concept, but Applicant does not bring himself favorably within the factors set forth in the Directive in a manner that warrants a grant of clearance.

FORMAL FINDINGS

Formal findings For or Against the 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. (Foreign Influence): Against the Applicant.

Subparas. 1.a.-1.j.: Against 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 Applicant's request for a security clearance.

Burt Smith

Administrative Judge