

DATE: March 18, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19006

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

SYNOPSIS

Applicant emigrated from Nigeria in 1988 and became a U.S. citizen in 1998. He continued to hold a Nigerian passport and use it on his only trip to Nigeria since becoming a citizen in 2002 when he also held a U.S. passport. Three days before the hearing he returned the passport to the Nigerian embassy. Applicant's mother and six siblings live in and are citizens of Nigeria. Applicant has overdue debts of at least \$15,000.00. Only one large debt and the smallest debts have been resolved. Clearance is denied.

STATEMENT OF THE CASE

On August 25, 2004, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated October 1, 2004, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on January 14, 2005, and a Notice of Hearing was issued the same day. A hearing was held on February 8, 2005. By stipulation, the Government introduced ten exhibits at the hearing and the Applicant introduced 23. All were accepted into evidence. The Applicant testified on his own behalf. The transcript was received on February 23, 2005.

FINDINGS OF FACT

Applicant has admitted with explanation one of the factual allegations pertaining to foreign preference under Guideline C and two of the allegations pertaining to foreign influence under Guideline B. He denied the others and denied all of

the allegations pertaining to financial considerations under Guideline F. His admissions are incorporated herein as findings of fact.. After a complete review of the record and I make the following additional findings of fact:

Applicant is a 43-year-old engineer employed by a major U.S. defense contractor for the past three years who emigrated from Nigeria in 1988 and became a citizen in 1998. He continued to hold a Nigerian passport and use it on his only trip to Nigeria in 2002. At that time he also held a U.S. passport. Three days before the hearing in this matter he returned the passport to the Nigerian embassy.

Applicant's mother and six siblings live in and are citizens of Nigeria. One brother works for the Federal Ministry of Finance of the Government of Nigeria, three others are employed by oil companies and the fifth is a professional soccer player. His one sister is a housewife.

Applicant has delinquent debts of at least \$15,000.00. Only one large debt and the smallest debts totaling \$3,000.00 have been resolved. He has no apparent ability to resolve the remaining large ones although he is in discussion with some of the creditors. He is married with one step-child and is an elder in his church. The illness of his wife between 1996 and 2003 was the cause of some of the debts he has incurred. The longest period of hospitalization was in 2003.

Applicant lost his job in 1996, became a student, and worked as a faculty assistant at a relatively low salary. He obtained sufficient education to obtain the type of work he now performs but the hiatus between 1996 and his next full employment in 1999 as well as a six month unemployment in 2001 was a cause of some of his debt. His work record is good as reflected by letters of reference from supervisors and colleagues.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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.

Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

"A security risk may exist when an individual's immediate family 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." Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

CONCLUSION

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

The applicable guidelines in the SOR for Foreign Preference Guideline C provide that an individual who acts in such a way as to indicate a preference for a foreign country over the United States may be prone to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern and may be disqualifying include the exercise of dual citizenship (E2.A3.1.2.1.), and the possession and/or use of a foreign passport. Security concerns may be mitigated by a willingness to renounce dual citizenship (E2.A3.1.3.4.) and return or invalidation of a foreign passport. Applicant has expressed a renunciation of his Nigerian citizenship and returned his passport, albeit only a few days before the hearing. His failure to do so earlier is not helpful to his case and the fact that he used it to travel to Nigeria after he became a citizen and had obtained a U.S. passport militates against the application of a mitigating condition.

The applicable Guidelines in the SOR concerning Foreign Influence-Guideline B provide that a security risk may exist when an individual's immediate family are not citizens of the United States or may be subject to duress. Such facts could create the potential for foreign influence that could result in the compromise of classified information.

Conditions that could raise a security concern and may be disqualifying include having an immediate family member, or a person to whom the individual has close ties of affection or obligation, who is a citizen of, or resident in a foreign country. (E2.A2.1.2.1.) Possible mitigating conditions that might be applicable are a determination that the immediate family members would not constitute an unacceptable security risk. Such security concerns could be mitigated by a determination "that the immediate family members 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." (E2.A2.1.3.1.)

Applicant's extensive delinquent debts raise concerns under Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and an inability or unwillingness to satisfy debts. (E2.A6.1.2.3) Mitigating conditions include the fact that the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.) Applicant has failed to mitigate these concerns.

The following is an analysis of the testimony relating to the delinquent debts keyed to the SOR allegations divided into four categories:

1. Applicant claims to have paid four debts in full but no evidence was provided (3.c-\$196.00; 3.e-\$287.00; 3.h-\$61.00; and 3.k-\$2814.00)
2. Two debts are being paid, but there is no assertion as to the amounts that have been paid (3.l-\$2,403.00 and 3.j-\$3,531.00)
3. Two debts are duplicates, but at least one is owed (3.f-\$4,919.00 and 3.g-\$3,231.00)
4. Four debts are with creditors who decline to take partial payments and Applicant asserts he is saving to pay them off in lump sums (3.a-\$2,600.00; 3.b-\$1,600.00; 3.d-\$3,173.00; and 3.i- \$4,456.00)

Accepting as true Applicant's assertions regarding payments and duplication, he has, at a minimum, delinquent debts in the amount of almost \$15,000.00 with no plan or apparent ability to resolve them. Although some of the debts arose because of unemployment and illnesses in the family, no evidence was offered as to the extent of the debts incurred because of illness except for one small hospital bill that had been paid. Applicant has had a good job for three years with very little having been accomplished in paying or settling the delinquent debts.

Based on the evidence of record, including Applicant's admissions, the Government established reasons to deny him a

security clearance because of foreign preference, foreign influence, and financial considerations. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The steps he has taken to mitigate foreign preference and the facts regarding his use of a foreign passport do not provide a sufficient basis to mitigate that allegation. He has not demonstrated that his extensive family in Nigeria does not create a problem regarding foreign influence and his extensive debts, despite his assertion that some have been paid and his intent to pay the remainder, preclude mitigation of financial issues.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is a fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

After considering all the evidence in its totality, and focusing on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Paragraph 2 Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Paragraph 3 Guideline F: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: For Applicant

Subparagraph 3.d.: Against Applicant

Subparagraph 3.e.: For Applicant

Subparagraph 3.f.: Against Applicant

Subparagraph 3.g.: Against Applicant

Subparagraph 3.h.: For Applicant

Subparagraph 3.i.: Against Applicant

Subparagraph 3 j.: Against Applicant

Subparagraph 3.k.: For Applicant

Subparagraph 3.l.: Against Applicant

DECISION

After full consideration of all the facts and documents 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. Clearance is denied.

Charles D. Ablard

Administrative Judge