

KEYWORD: Foreign Influence

DIGEST: Applicant is a Certified Public Accountant employed as an auditor for a defense contractor. He came to the United States from Nigeria in 1982 to study and became a United States citizen in 1991. His mother is a permanent resident alien of the United States but a citizen of Nigeria. She went to Nigeria for a visit in 2004 but became so ill so has been unable to travel back to the United States. She is presently residing in Nigeria with Applicant's sister, a citizen and resident of Nigeria. His mother and sister are not in a position to be exploited by a foreign power. Applicant's in-laws are citizens of and reside in Nigeria. His father-in-law is an official with an international organization and the in-laws are not in a position to be exploited by a foreign power. Clearance is granted.

CASENO: 03-14086.h1

DATE: 02/17/2005

DATE: February 17, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-14086

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Brynee K. Baylor, Esq.

SYNOPSIS

Applicant is a Certified Public Accountant employed as an auditor for a defense contractor. He came to the United States from Nigeria in 1982 to study and became a United States citizen in 1991. His mother is a permanent resident alien of the United States but a citizen of Nigeria. She went to Nigeria for a visit in 2004 but became so ill so has been unable to travel back to the United States. She is presently residing in Nigeria with Applicant's sister, a citizen and resident of Nigeria. His mother and sister are not in a position to be exploited by a foreign power. Applicant's in-laws are citizens of and reside in Nigeria. His father-in-law is an official with an international organization and the in-laws are not in a position to be exploited by a foreign power. Clearance is granted.

STATEMENT OF THE CASE

On May 6, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on May 27, 2004. The SOR alleges security concerns under Guideline B (Foreign Influence) of the Directive.

Applicant answered the SOR in writing on June 1, 2004. He admitted all of the allegations under Guidelines B. He initially elected to have the matter decided on the written record in lieu of a hearing and Department Counsel submitted the Government's written case on September 22, 2004. Applicant received a complete file of relevant material (FORM) on September 27, 2004, and provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. He acknowledged receipt of the FORM on October 20, 2004. Applicant responded to the FORM on November 3, 2004, and denied three and admitted two of the allegations under Guideline B. He requested a hearing before an administrative judge. The request for hearing was received by DOHA on November 3, 2004 and the case was assigned to me on November 23, 2004. Department Counsel was prepared to proceed with the case on December 2, 2004, and a notice of hearing was issued on December 3, 2004. The hearing was held on January 5, 2005. Six government exhibits, one Applicant exhibit, the testimony of the Applicant, and one Applicant witness

were received during the hearing. The transcript was received on January 11, 2005.

FINDINGS OF FACT

Applicant is a 47-year-old Certified Public Accountant employed as an auditor for a defense contractor. Applicant was born in Nigeria and came to the United States as a student in 1982. He received his bachelor's and master's degrees from United States universities and licensed as a Certified Public Accountant in 1994. He became a naturalized United States citizen in 1991. ⁽¹⁾ Applicant was granted a security clearance by another government department in 1999. ⁽²⁾ He has been married to his present wife for six years and they have two young children who are native born United States citizens. His wife became a naturalized United States citizen in 2004 and is employed as a civilian employee of a Department of Defense agency. ⁽³⁾ His first wife is a United States citizen and they had a daughter who is a United States citizen. His second wife was from Nigeria. He has no contact with her but believes she is a now a United States citizen. ⁽⁴⁾

Applicant's mother is 84-years-old and a Nigerian citizen presently residing with Applicant's sister in Nigeria. She came to the United States five years ago and is a permanent resident alien. When in the United States, she lives with Applicant and his family. While on a visit to Nigeria in early 2004, his mother had a stroke and by doctor's orders is unable to travel to return to the United States. She is currently residing in Nigeria because of her medical condition. She will return to the United States when her medical condition permits. ⁽⁵⁾

Applicant's sister works for a bank in a large Nigerian commercial city and is a citizen and resident of Nigeria. His sister's husband works for a bank in Nigeria and their two children are students at universities in the United States. This sister came to the United States approximately a year ago to visit her siblings and children. ⁽⁶⁾

Applicant has two sister's in the United States; one a United States citizen, and the other a permanent resident alien. ⁽⁷⁾ He is not sure when the sister who is a permanent resident alien was last in Nigeria. However, his sister who is the United States citizen visited Nigeria in January 2004 with Applicant when their mother became ill.

Applicant's wife's mother and father are citizens of Nigeria and reside in Nigeria. The mother is at home and the father is a project manager for an international organization. Applicant's wife has five siblings, two reside in Nigeria, two reside in England, and one in the United States. ⁽⁸⁾

Applicant has made four trips to Nigeria since 1997. The first three were for pleasure. The fourth trip in January 2004 was with his sister to visit their sick mother. ⁽⁹⁾ He talks to his sister or mother in Nigeria approximately once a month. He has sent about \$6,000 to his mother to help pay her

medical costs in Nigeria.⁽¹⁰⁾ His wife also talks to her parents in Nigeria about once a month.⁽¹¹⁾ None of Applicant's family in Nigeria are employees or agents of Nigeria.⁽¹²⁾ Applicant and his family are close and they all care about their mother.⁽¹³⁾

Areas of Nigeria are marked by serious instability and outbreaks of armed conflicts between religious, political, and ethnic factions. The areas in which Applicant's mother, sister, and in-laws reside are predominantly Christian and not identified by the U.S. State Department as areas where outbreaks of violence have recently occurred. There is considerable risks to traveling in Nigeria because of violent crimes, religious tensions, and terrorism.⁽¹⁴⁾ The government's human rights record is poor and the government continues to commit serious human rights abuses.⁽¹⁵⁾ There have been improved and strong ties between Nigeria and the United State since June 1998. Bilateral relationships have continued to improve and there is good cooperation on many important foreign policy goals. The Nigerian government has lent strong support to the United States government's counter-terrorism efforts since September 11, 2001. Nigeria has played a leading role in forging an anti-terrorism consensus among states in Sub-Saharan Africa.⁽¹⁶⁾ There is no evidence Nigeria has exploited its citizens to obtain classified information from United States citizens.

POLICIES

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."⁽¹⁷⁾ The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgement, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information."⁽¹⁸⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."⁽¹⁹⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽²⁰⁾ An administrative judge should consider: (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 applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.⁽²¹⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to

classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽²²⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽²³⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽²⁴⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²⁵⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."⁽²⁶⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽²⁷⁾

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

Under Guideline B (Foreign Influence), a security concern exists when an individual's immediate family and other persons whom the Applicant 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 are also relevant to security determinations if they make an individual potentially vulnerable to coercions, exploitation, or pressure.⁽²⁸⁾ The Foreign Influence Disqualifying Condition that applies to Applicant is Directive ¶ E2.A2.1.2.2 (*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*). An immediate family member includes spouse, father, mother, sons, daughters, brothers, or sisters.⁽²⁹⁾ Applicant's mother and sister in Nigeria are citizens of and resident in a foreign country and fall within the disqualifying condition. Applicant's sister in the United States who is a permanent resident alien but a citizen of Nigeria falls within the disqualifying condition. His in-laws are not immediate family members but there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse.⁽³⁰⁾ Applicant's in-laws fall within the disqualifying condition.⁽³¹⁾ I conclude the disqualifying condition has been established as to the mother, sister in Nigeria, the permanent resident alien sister and the mother-in-law and the father-in-law.

The Foreign Influence Mitigating Condition that applies is Directive ¶ E2.A2.1.3.1 (*a determination that the immediate family member(s) 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*). Applicant must establish that the people falling within the disqualifying condition are not agents of a foreign power and not in a position to be exploited by a foreign power in a way to force Applicant to choose between loyalty to the persons involved.⁽³²⁾

and the United States. None of Applicant's family are agents of a foreign power. The sister that is a Nigerian citizen but residing in the United States is not in a position to be exploited by a foreign power. Applicant's mother is elderly and sick and the chances of exploitation minimal. In addition, as soon as she is able to travel, she will return to the United States and any potential security concern will decrease. The possibility of exploitation of Applicant's sister in Nigeria is also minimal. She is a banker working in a large commercial city in Nigeria. Applicant's father-in-law, because of his position with the international organization, and the mother in-laws are not in a position to be exploited by a foreign power. While there is political, religious, and criminal unrest in Nigeria, it is not in the areas where Applicant's mother, sister, and in-laws reside. Nigeria has good relations with the United States and the possibility they would try to exploit the family members of an United States citizen is highly unlikely. Applicant has been in the United States for over 20 years, almost all his adult life. He has been a United States citizen for over 10 years. His family ties and bonds are stronger but so is his ties to the United States. The possibility of Applicant being forced by exploitation of a foreign power to chose between his loyalty to a person or loyalty to the United States is very minimal. I conclude the family members are not in a position to be exploited by a foreign power in a way that could force the Applicant to choose between loyalty to the family members involved and the United States. Applicant has mitigated the foreign influence security concerns.

I carefully considered all of the circumstances in light of the "whole person" concept for a fair, impartial, and commonsense decision. I conclude the Applicant is eligible 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

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant.

DECISION

In light of all of the circumstances presented in the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Thomas M. Crean

Administrative Judge

1. Tr. 17-19.
2. Tr. 34.
3. Tr. 63. Allegation 1.a of the SOR alleges Applicant's wife is not a citizen of the United States. Since the SOR was issued, Applicant's wife became a citizen and thus negates discussion of this allegation.
4. Tr. 47.
5. Exhibit 1 (Security Clearance Application, dated September 10, 2001) at 4; Tr. 21, and 43.
6. *Id.*
7. Tr. 43.
8. Tr. 67-68.
9. Tr. 38-39.
10. Tr. 41-42.
11. Tr. 60.
12. Tr. 24, 29.
13. Tr. 50.
14. Exhibit 4 (Department of State Travel Warning, dated July 19, 2004) at 1.
15. Exhibit 6 (Nigeria: Country Report on Human Rights Practices - 2003, dated February 25, 2004) at 1.
16. Exhibit 3 (Department of State Background Note: Nigeria, dated November 2004), at 13.
17. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

18. Exec. Or. 12968, *Access to Classified Information* § 3.1 (b) (Aug. 4, 1995).
19. Directive ¶ E2.2.1.
20. Id.
21. Directive ¶¶ E2.2.1.1-E2.2.1.9.
22. *See* Exec. Or. 10865 § 7.
23. Directive ¶ E3.1.14.
24. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
25. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
26. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
27. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
28. Directive ¶ E2.A2.1.1.
29. Directive ¶ E2.A2.1.2.1.
30. ISCR Case No. 01-02452 (App. Bd. Nov 21, 2002), at 8.
31. Applicant's wife's siblings that are citizens of Nigeria and not United States citizens are not alleged as security concerns in the SOR and will not be discussed further.
32. ISCR Case No. 02-24254 (App. Bd. June 29, 2004); *see* ISCR Case No. 02-02195 (App. Bd. April 9, 2004).