

DATE: October 27, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06593

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Richard Stevens, Esq., Department Counsel

FOR APPLICANT

Elizabeth L. Newman, Esq.

SYNOPSIS

Applicant was born in 1950 in the Colony and Protectorate of Nigeria(British), now the Federal Republic of Nigeria (Nigeria). He became a United States citizen in 1990. His wife and one brother, are naturalized United States citizens, living in the United States. His daughter is American-born and living with him. One sister, a citizen of Nigeria, also lives in the United States. Security concerns have been raised because Applicant maintained dual citizenship, and because two of his brothers are citizens and residents of the Nigeria, three sisters are citizens of the Nigeria, and two of his sisters continue to reside there. Security concerns arising from possible foreign influence and foreign preference are mitigated. Clearance is granted.

STATEMENT OF THE CASE

On April 25, 2005, the Defense 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 Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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. Specifically, the SOR set forth security concerns arising under Guidelines B, Foreign Influence, and C, Foreign Preference, of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On May 20, 2005, Applicant submitted a notarized response to the allegations. He requested a hearing. This matter was assigned to me on July 27, 2005. A notice of hearing was issued on August 18, 2005, and a hearing was held on September 15, 2005. Seven exhibits marked Government Exhibits 1 through 7 were admitted into evidence. Applicant's Exhibits A through C were admitted into evidence. One witness testified on behalf of Applicant, who also testified on his own behalf. The hearing transcript was received on September 29, 2005.

FINDINGS OF FACT

Applicant admitted, with explanation, all the allegations of the SOR.⁽¹⁾ Those admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 45-year-old senior information engineer for a defense contractor. Applicant has worked for this contractor since 2003. Applicant completed a security clearance application (SF 86) in May 2003.⁽²⁾

Applicant was born in the Federal Republic of Nigeria (Nigeria).⁽³⁾ He immigrated to the United States (U.S.) in 1982 at the age of 22.⁽⁴⁾ Initially, he attended English language classes.⁽⁵⁾ He then enrolled in a major U.S. university.⁽⁶⁾ He received his Bachelor of Science degree in business in 1986 and his Master of Science degree in computer science in 1991.⁽⁷⁾ He paid for his education by working and with school loans.⁽⁸⁾ Subsequent to college, he has worked in the computer industry.⁽⁹⁾

In 1990, Applicant became a naturalized U.S. citizen.⁽¹⁰⁾ He obtained a U.S. passport shortly thereafter.⁽¹¹⁾ He, however, retained his Nigerian citizenship.⁽¹²⁾ When he traveled to Nigeria on his U.S. passport, he encountered unnecessary delays and hassles in obtaining a Nigerian travel visa.⁽¹³⁾ Because of these problems, he obtained a Nigerian passport to facilitate travel between the U.S. and Nigeria.⁽¹⁴⁾ His Nigerian passport expired in 2004 and he did not renew it.⁽¹⁵⁾ He indicated to the investigator he would renounce his Nigerian citizenship, which he did by letter dated May 16, 2005.⁽¹⁶⁾ The Nigerian Embassy accepted his renunciation in a letter dated May 19, 2005.⁽¹⁷⁾

Applicant traveled to Nigeria in 1993 to visit his family.⁽¹⁸⁾ During this trip, he met his wife.⁽¹⁹⁾ They married in a traditional ceremony in Nigeria in 1994.⁽²⁰⁾ She immigrated to the U.S. in early 1995.⁽²¹⁾ They also had a church wedding in the U.S. after she arrived.⁽²²⁾ His wife received a Bachelor of Science degree from a U.S. university.⁽²³⁾ She now works for a federal contractor and has a security clearance.⁽²⁴⁾ His wife is a naturalized U.S. citizen.⁽²⁵⁾ Although she has an expired Nigerian passport, she considers herself only a U.S. citizen.⁽²⁶⁾ She has not returned to Nigeria since entering the U.S. They have a six-year-old daughter, who was born in the U.S., and expect a new baby shortly.⁽²⁷⁾

Applicant was born in northern Nigeria.⁽²⁸⁾ When civil war erupted here, his family moved to south, where some family members still live.⁽²⁹⁾ His father is deceased.⁽³⁰⁾ His mother is currently in Nigeria, but will return to the U.S. in the October or November 2005.⁽³¹⁾ Prior to her current extended stay in Nigeria, his mother lived in the U.S., staying either with him or a sister.

He has three sisters and three brothers. One sister is a permanent resident of the U.S., is married to a U.S. citizen, and lives in the U.S. with her husband and children, although she retains her Nigerian citizenship.⁽³²⁾ One brother is a U.S. citizen and lives in the U.S. with his family.⁽³³⁾ His other siblings are residents and citizens of Nigeria.⁽³⁴⁾ One brother and one sister live in southern Nigeria. This brother works as a street hawker and this sister is a home maker.⁽³⁵⁾ His remaining brother and sister live in a rural area of the southern Nigeria. This brother is handicapped and does not work. This sister is a teacher in the rural area.⁽³⁶⁾ His family members seldom travel from home.⁽³⁷⁾ His mother-in-law and father-in-law reside in southern Nigeria.⁽³⁸⁾ He has little contact with them, unless they are visiting him the U.S.⁽³⁹⁾ His father-in-law is a retired businessman and in poor health. His mother-in-law does not work. They do not travel to the north.⁽⁴⁰⁾ None of these individuals work for the government or military organizations.⁽⁴¹⁾

Nigeria became an independent country in 1960.⁽⁴²⁾ After several changes in its governing structure, it is now an emerging democracy with strong ties to the U.S.⁽⁴³⁾ The current Nigerian government is focusing on economic reform and rebuilding its infrastructure, not espionage against the U.S.⁽⁴⁴⁾ While its human rights record still needs serious improvement, police actions appear to target political activists and criminals.⁽⁴⁵⁾ Nigerian Christians reside in southern

Nigeria.⁽⁴⁶⁾ The Nigerian Muslims reside in northern Nigeria.⁽⁴⁷⁾ Applicant's family and in-laws are Christians, living in southern Nigeria. If they travel, family members travel to the homes of other family members in the south.⁽⁴⁸⁾

Applicant has a good financial record and has not been arrested for or charged with any criminal offenses.⁽⁴⁹⁾ His mother owns a small house in the north.⁽⁵⁰⁾ Since the family now lives in the south, she is trying to sell it.⁽⁵¹⁾ Applicant traveled to Nigeria in December 2000 to visit his mother, who lives in the southern tier.⁽⁵²⁾ He traveled to Nigeria again in 2003 to bring his mother back to the U.S.⁽⁵³⁾

1. Applicant's Answer to SOR with attachment, dated May 17, 2005, at 1-5.
2. Government Exhibit 1 (Security Clearance Application, dated May 21, 2003).
3. *Id.* at 1; Tr. at 18.
4. Tr. at 22, 59-60.
5. Tr. at 26-29.
6. Tr. at 29-31.
7. *Id.*
8. Tr. at 31.
9. Tr. at 32-37.
10. Government Exhibit 1, *supra* note 2, at 1.
11. *Id.*; Tr. at 38.
12. *Id.*
13. Tr. at 38-39.
14. Tr. at 39.
15. Government Exhibit 2 (Applicant's statement, signed March 18, 2004) at 3.
16. *Id.*; Applicant's Answer to SOR, *supra* note 1, attachment 1.
17. Applicant's Exhibit A.
18. Applicant's Answer to SOR, *supra* note 1, attachment 1.
19. *Id.*; Tr. at 40.
20. Tr. at 41-42, 44-45, 77.
21. *Id.*
22. Tr. at 45-46, 77.
23. Tr. at 78.
24. Tr. at 71-72.

25. Tr. at 80; Government Exhibit 1, *supra* note 2, at 6.

26. *Id.*

27. Tr. at 46.

28. Tr. at 24.

29. Tr. at 24-25.

30. Tr. at 18.

31. Tr. at 50, 55-57.

32. Tr. at 20, Government Exhibit 2, *supra* note 2, at 7.

33. *Id.*; Tr. at 20-21.

34. Government Exhibit 2, *supra* note 2, at 8.

35. Tr. at 53-54.

36. Government Exhibit 2, *supra* note 2, at 8; Tr. at 52.

37. Tr. at 52-53.

38. Tr. at 73.

39. Tr. at 68.

40. Tr. at 82-83.

41. Tr. at 52, 62, 73.

42. Government Exhibit 3 (U.S. Department of State, Bureau of African Affairs, Background Note: Nigeria, dated January 2005) at 1.

43. *Id.* at 2-7.

44. *Id.* at 10.

45. Government Exhibit 6 (U.S. Department of State, Country Reports on Human Rights Practices 2004 for Nigeria, dated February 28, 2005.)

46. Government Exhibit 3, *supra* note 3, at 2.

47. *Id.*; Tr. at 70.

48. Tr. at 52-53, 66, 84.

49. Government Exhibit 1, *supra* note 2, at 11-13.

50. Tr. at 65.

51. *Id.*

52. Applicant's Answer to SOR, *supra* note 1, at 2.

53. *Id.* [\(54\)](#)

54.