

KEYWORD: Foreign Influence

DIGEST: Applicant's spouse is a citizen of Nigeria and a permanent U.S. resident. Applicant's mother and 12 siblings are citizens and residents of Nigeria, as are his wife's two brothers and two sisters. Applicant sends his mother approximately \$200 in support every three months. Applicant failed to mitigate Guideline B security concerns related to his family relationships in Nigeria. Clearance is denied.

CASE NO: 04-08427.h1

DATE: 04/28/2006

DATE: April 28, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08427

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's spouse is a citizen of Nigeria and a permanent U.S. resident. Applicant's mother and 12 siblings are citizens and residents of Nigeria, as are his wife's two brothers and two sisters. Applicant sends his mother approximately \$200 in support every three months. Applicant failed to mitigate Guideline B security concerns related to his family relationships in Nigeria. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On May 24, 2005, under the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing August 18, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on December 9, 2005. I convened a hearing on February 1, 2006, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses, introduced one exhibit, and offered three documents for administrative notice. Applicant called no witnesses and introduced three exhibits (Ex.), which were identified as Ex. A through C. The Government's exhibit (Ex.) was numbered 1, and its documents offered for administrative notice were numbered I through III. All exhibits were admitted into evidence without objection. The documents identified for administrative notice were admitted to the record of the proceeding without objection. DOHA received the transcript (Tr.) of the proceeding February 8, 2006.

FINDINGS OF FACT

The SOR contains six allegations of disqualifying conduct under Guideline B, Foreign Influence. In his answer to the SOR, Applicant admitted all Guideline B allegations. His admissions are incorporated as findings of fact.

Applicant is 59 years old and employed as a lieutenant supervisor security guard by a defense contractor. (Ex. 1; Tr. 42.) He has been married twice and is the father of five children, ages 16 to 31. (Tr 16-17.) Applicant was born in Nigeria, attended high school there, and worked for two years as a custom officer for the Nigerian government. He immigrated to the U.S. in 1969. He became a U.S. citizen in 1996. (Tr. 42-43.) His last trip to Nigeria was in 1996, before he became a U.S. citizen. He traveled to Nigeria on his Nigerian passport. After becoming a U.S. citizen, Applicant acquired a U.S. passport. (Tr. 46-47.)

Applicant's second wife is a citizen of Nigeria and resides with him in the U.S. She has U.S. permanent resident status. (Tr. 50.) Applicant's wife has two brothers and two sisters; all are married and are citizens and residents of Nigeria. While the wife's brothers and sisters live in a remote area and do not have telephones, they do contact her when they want her to send them clothing or shoes. (Tr. 52.)

Applicant's father, who is now deceased, was a polygamist. Consequently, Applicant had four step-mothers, all of whom were citizens and residents of Nigeria. All four step-mothers are deceased. (Tr. 15; 54.)

Applicant's 82-year-old mother is a citizen and resident of Nigeria. He has twelve siblings who are citizens and residents of Nigeria. Applicant's mother lives with two of his sisters. (Tr. 61.) He speaks with his mother by telephone several times a year. When Applicant's wife went to Nigeria in December 2005, she purchased a cellular telephone for Applicant's mother to use to call him. (Tr. 55-57.)

About every three months, Applicant sends his mother \$200 for her support. In the past, he sent money to his mother through Western Union. After she obtained the money in dollars, Applicant's mother sent for money traders who came to her house and exchanged the dollars for Nigerian lira. During this process, two of Applicant's brothers-in-law stood by to protect the mother from being robbed. (Tr. 62-66.) More recently, Applicant has established a bank account for his mother and the money he provides her is sent to her account in Nigeria. (Tr. 65-66.)

One of Applicant's brothers worked as a maintenance engineer for a Nigerian government ministry. He retired from that position approximately 15 to 18 years ago. Applicant has not had contact with the brother since 1969. (Tr. 15; 53-54.)

Applicant submitted a letter of character reference from his supervisor. The supervisor recommended him for a security clearance and said he carried out his assigned duties in an outstanding manner. (Ex. C.) Applicant also offered as two

exhibits awards he had received from his employer. One award was for outstanding service to his employer's clients and was presented to him in August 2004. (Ex. A.) The second award was as employee of the year for performance in his employer's Eastern region. That award was also given to Applicant in 2004. (Ex. B.)

I take administrative notice that the U.S. Department of State issued a travel warning for Nigeria on May 20, 2005. The travel warning stated that because law and order have broken down in Nigeria, travelers are at risk and could become victims of armed robbery or kidnaping. Additionally, the travel warning stated that al-Qaida leadership has expressed an interest in overthrowing the government of Nigeria. (Government Document II for Administrative Notice.) A State Department report on the human rights practices in Nigeria notes that many Nigerians live in poverty, the judiciary at the state and local levels of government suffers from corruption, and members of the security forces in the country committed numerous human rights abuses, including unlawful killings (Government Document III for Administrative Notice.)

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. 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 judgment, 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." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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 establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline B - Foreign Influence

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's wife is a citizen of Nigeria currently residing with him in the U.S. (¶ 1.a.); that his mother and 12 siblings are citizens and residents of Nigeria (¶ 1.b.); that his four step-mothers are citizens and residents of Nigeria (¶ 1.c.); that his two brothers-in-law and two sisters-in-law are citizens and residents of Nigeria (¶ 1.d.); that Applicant sends his mother approximately \$200 every three months (¶ 1.e.); and Applicant's brother worked for a ministry of the Nigerian government (¶ 1.f.).

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that Nigeria is a country in chaos, without the benefit of a stable lawful government, a situation that threatens U.S. security interests. American citizens with immediate family members who are citizens or residents of Nigeria could be vulnerable to coercion, exploitation, or pressure.

Applicant admits all six allegations under Guideline B. His admissions raise security concerns under Disqualifying Conditions (DC) E2.A2.1.2.1, E2.A2.1.2.2, E2.A2.1.2.3., and E2.A2.1.2.6.

At the hearing, Applicant testified in response to SOR allegation 1.c. that his four step-mothers, who were citizens and residents of Nigeria, are deceased. In response to SOR allegation 1.f., he testified that one of his brothers, a citizen and resident of Nigeria, was employed by a ministry of the Nigerian government as a maintenance engineer in the past but retired from that position approximately 15 to 18 years ago.⁽³⁾ Applicant's last contact with the brother occurred in 1969. Since the facts derived from Applicant's testimony moot the security concerns identified in allegations 1.c. and 1.f. of the SOR, those allegations are concluded for the Applicant.

However, additional security concerns remain. Applicant's mother, 12 siblings, and two brothers-in-law and two sisters-in-law are citizens and residents of Nigeria. The presence of these immediate family members in Nigeria raises security concerns under E2.A2.1.2.1 of Guideline B. Applicant's wife, a citizen of Nigeria and a U.S. permanent resident, shares a home with Applicant, raising a concern under DC E2.A2.1.2.2. Applicant contributes approximately \$200 every three months to the support of his mother in Nigeria, raising concerns that this conduct may make him vulnerable under DC E2.A2.1.2.6 of Guideline B to coercion, exploitation, or pressure by the government of Nigeria or agents of a foreign power.

An applicant may mitigate foreign influence security concerns by demonstrating that 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 an applicant to choose between loyalty to the foreign associates and loyalty to the U.S. mitigating Condition (MC) E2.A2.1.3.1. While the evidence does not establish that Applicant's wife, mother, 12 siblings, two brothers-in-law, and two sisters-in-law are agents of a foreign power, they are citizens of a state where individuals with interests antithetical to the United States operate with few legal constraints. Applicant offered no evidence to rebut the Government's assertion that his family members in Nigeria could be exploited by these groups in a way that could force him to choose between loyalty to his family and the security interests of the United States. (ISCR Case No. 03-15485, at 4-6 (App. Bd. June 2, 2005)) Accordingly, MC E2.A2.1.3.1 does not apply to Applicant's case.

An applicant may also mitigate foreign influence security concerns if he shows his contacts and correspondence with foreign citizens are casual and infrequent. C E2.A2.1.3.3. Applicant's contacts with his family members who are citizens and residents of Nigeria are based on ties of familial affection or obligation. While Applicant has no communication with some of his 12 siblings and communicates occasionally with others, his contacts with his mother are frequent and based on close ties of affection and obligation. He contributes to his mother's support by regularly sending her money. He shares his home with his wife, a citizen of Nigeria, who has four siblings who are citizens and residents of Nigeria. Applicant's wife last traveled to Nigeria in December 2005. Her siblings contact her when they need her to send them shoes or clothing. Accordingly, mitigating condition E2.A2.1.3.3 does not apply to Applicant's relationships with his wife, mother, some of his siblings, and his wife's siblings, all of whom are citizens of Nigeria.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal American citizen and a credit to his adopted country. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

However, Applicant failed to put forward evidence that could mitigate security concerns alleged in the SOR and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information. Accordingly, the allegations in subparagraphs 1.a., 1.b., 1.d., and 1.e. under Guideline B of the SOR are concluded against the Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: For Applicant

DECISION

In light of all of 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. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. The relevant Guideline B disqualifying condition is E2.A2.1.2.3, which reads as follows: "Relatives, cohabitants, or associates who are connected with any foreign government".