

KEYWORD: Foreign Influence; Personal Conduct

DIGEST: Applicant's parents, brother, mother-in-law, aunt, and uncle are citizens and residents of

Nigeria. Applicant's sister is a citizen of Nigeria living in Canada, and his mother is employed as an accountant by a state government in Nigeria. Applicant deliberately falsified the nature and duration of previous employment on an application for employment with a security protection service. Applicant failed to mitigate Guideline B and Guideline E security concerns. Clearance is denied.

CASE NO: 04-11757. h1

DATE: 06/19/2006

DATE: June 19, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-11757

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Stephanie Hess, Esq., Department Counsel

FOR APPLICANT

Andrew J. Perlmutter, Esq.

SYNOPSIS

Applicant's parents, brother, mother-in-law, aunt, and uncle are citizens and residents of

Nigeria. Applicant's sister is a citizen of Nigeria living in Canada, and his mother is employed as an accountant by a state government in Nigeria. Applicant deliberately falsified the nature and duration of previous employment on an application for employment with a security protection service. Applicant failed to mitigate Guideline B and Guideline E security concerns. 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 September 27, 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) and Guideline E (Personal Conduct) of the Directive. Applicant filed his answer to the SOR on November 18, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on February 14, 2006. I convened a hearing on April 24, 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 three exhibits, and offered four documents for administrative notice. Applicant called no witnesses. He did not introduce exhibits, but he offered three documents for administrative notice, which were identified as Applicant's documents for administrative notice A, B, and C. The Government's exhibits (Ex.) were numbered 1, 2 and 3. The Government's 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 May 4, 2006

RULING ON PROCEDURE

During Applicant's testimony, it came to light that he has a younger brother who is a citizen of Nigeria and resides in Nigeria as a student. Accordingly, without objection from either party, the SOR was amended to include the facts of Applicant's younger brother's citizenship and residency.

FINDINGS OF FACT

The amended SOR contains nine allegations under Guideline B, Foreign Influence, and one allegation of disqualifying conduct under Guideline E, Personal Conduct. In his answer to the SOR, Applicant admitted six Guideline B allegations. At his hearing, Applicant admitted the Guideline B allegation added to the amended SOR. He denied two Guideline B allegations and admitted, with explanation, the Guideline E allegation. His admissions are incorporated as findings of fact.

Applicant is 33 years old, married to a U.S. citizen, and employed as a security officer by a government contractor. (Ex. 1 at 5; Ex. 3 at 7; Tr. 34; 45.) He was born in the U.S. to citizens of Nigeria and holds dual citizenship (Ex. 2 at 2.) In 1977, when Applicant was four years old, his parents acquired a Nigerian passport for him. In 1979, Applicant's parents acquired a U.S. passport for him. (Ex. 2 at 4.) Applicant's family returned to Nigeria in either 1977 or 1979. (3) Applicant was raised and educated in Nigeria. In 1998, he received a bachelor of science degree from a university in Nigeria. (Ex. 1 at 3; Ex. 2 at 2.) From 1997 to 1998, Applicant worked in Nigeria as a receptionist at a brewery. He also ran errands for his mother, who owed a company that sold stationery supplies to the Nigerian government. (Ex. 2 at 3.)

Applicant renewed his U.S. passport in 1998 and returned to the U.S., where he lived with a cousin. (Ex. 3 at 4.) For about a month, he ran errands for a woman his uncle told him was the wife of a diplomat. (Tr. 23; 35-36.) In 1998, Applicant applied for a job with a security company. His uncle, who was acting as his guardian (4), accompanied him when he was interviewed and submitted his application. The recruiter at the security company advised Applicant to list on his application any experience he had in safeguarding people and property. (Tr. 23; 37)

Applicant listed on his job application that he had been employed as an escort by the diplomat's wife from May 1996 to June 1998. He also listed he had been employed as a chaperone at an elementary school in the U.S. from April 1995 to May 1996. Applicant later learned that the woman who employed him to run errands for her was not the wife of a diplomat, but he did not give his employer correct information about his employment with her. He knew the information he gave about his dates of employment was false when he put it on his application, since the dates he gave were when he was living in Nigeria and had not yet living in the U.S. Applicant did not list his employment in Nigeria on the

application. (Ex. 2 at 5; Tr. 35-40.) Applicant admitted the recruiter for the employer did not tell him to falsify his employment history. He said he falsified his employment application because he needed a job in order to survive. (Ex. 2 at 5; Tr.37-39.) In his answer to the SOR, Applicant asserted his falsification about providing escort services to the wife of a diplomat resulted from his uncle's misdirection. (Answer to SOR at 1.)

Applicant is currently enrolled in a graduate program in the U.S. and hopes to obtain a master's degree in business management. (Tr. 47-48.)

Applicant's mother and father are citizens and residents of Nigeria. (Ex 1 at 5.) He has telephone contact with them about twice a month. (Ex.3 at 9.) Applicant's mother is employed as an accountant by a state government in Nigeria. (Ex. 3 at 3; Tr 24-25.) In 1996, she established a company that sold stationery supplies to the Nigerian government. The company went out of business in 2000. She currently owns no other businesses that have contracts with the Nigerian government. (Ex. 2 at 3; Tr. 24-25.)

Applicant's mother-in-law, brother, and paternal aunt and uncles are citizens and residents of Nigeria. Applicant's uncle was a teacher and is now retired. He receives a pension from the government of Nigeria. (Tr. 46-47. Applicant's sister is a citizen of Nigeria who resides in Canada as a student. Applicant's brother, who is approximately 21 years old, is a citizen of Nigeria and resides there as a full-time student. (Tr. 51-52.) Applicant has telephone contact with his mother-in-law approximately once a month and unspecified telephone contact with his sister.(Ex. 3 at 9.) In 2002, Applicant traveled to Nigeria to visit his relatives. (Ex. 3 at 6.)

I take administrative notice that the U.S. Department of State issued a travel warning for Nigeria on January 20, 2006. 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 I for Administrative Notice.) Nigeria is a federal republic composed of 36 states and a capital territory. 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.) Additionally, I note that the Federal Trade Commission has issued a FTC Consumer Alert warning that fraudulent advance-fee solicitations from Nigeria have reached "epidemic proportions." The FTC describes the advance fee scams as follows: "Claiming to be Nigerian officials, businesspeople or the surviving spouses of former government honchos, con artists offer to transfer millions of dollars into your bank account in exchange for a small fee. If you respond to the initial offer, you may receive 'official looking' documents. Typically, you're then asked to provide blank letterhead and your bank account numbers, as well as some money to cover transactions and transfer costs and attorney's fees." (Applicant's Document B 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 amended SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's mother, father, brother, mother-in-law, aunt, and uncle are citizens and residents of Nigeria (§§ 1.a., 1.e., 1.f., and 1.i.); that Applicant's sister is a citizen of Nigeria and a student currently residing in Nigeria (§ 1.d.); that his mother is employed by a state government in Nigeria (§ 1.b.); that his mother owned a company in Nigeria that provided supplies to the government of Nigeria (§ 1.c.); that Applicant performed and was compensated for personal errands for the wife of a diplomat in about 1998 (§ 1.g.), and that Applicant traveled to Nigeria in at least December 2002 (§ 1.h.).

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 Guideline B allegations in the amended SOR with the exception of allegations 1.c. and 1.g. At his hearing he provided credible testimony that his mother no longer owns the business which provided supplies to the government of Nigeria (§ 1.c.) and that the woman who employed him in 1998 to run errands and escort her was not the wife of a diplomat (§ 1.g.). Accordingly, the allegations at §§ 1.c. and 1.g. are concluded for Applicant. However, additional security concerns remain.

Applicant's Guideline B admissions raise security concerns under Disqualifying Conditions (DC) E2.A2.1.2.1., E2.A2.1.2.2., and E2.A2.1.2.3. Applicant's mother, father, brother, mother-in-law, aunt, and uncle 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. Additionally, Applicant's sister is a citizen of Nigeria and resides in Canada as a student. Applicant is close to his paternal aunt and uncle. The uncle, a retiree, receives a pension from the Nigerian government. These facts also raise security concerns under E2.A2.1.2.1. of Guideline B.

Applicant's wife, a U.S. citizen, shares a home with Applicant and is presumed to have familial obligations to her mother, a citizen and resident of Nigeria, raising a concern under DC E2.A2.1.2.2. that this relationship has potential for adverse foreign influence or duress. Applicant's mother is employed by one of Nigeria's 36 state governments, raising a concern under DC E2.A2.1.2.3.

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 mother, father, brother, mother-in-law, sister, aunt, and uncle are agents of a foreign power, they are citizens of a country 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. He speaks with his parents by telephone twice a month. He speaks with his mother-in-law once a month by telephone, and he communicates by telephone with his sister. His contacts with his parents and mother-in-law are frequent and based on close ties of affection and obligation. He shares his home with his wife, a U.S. citizen, whose mother is a citizen and resident of Nigeria. Applicant last traveled to Nigeria to visit his family members there in 2002. Accordingly, mitigating condition E2.A2.1.3.3. does not apply to Applicant's relationships with his parents, brother, mother-in-law, aunt, and uncle, all of whom are citizens of Nigeria.

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., 1.e, 1.f., 1.h., and 1.i. under Guideline B of the SOR are concluded against the Applicant.

Guideline E - Personal Conduct

In the SOR, DOHA alleged Applicant raised concerns under Guideline E, Personal Conduct, when he deliberately falsified employment dates on an application for employment in about 1998. In that application, Applicant falsely asserted he provided escort services in the U.S. for a diplomat and his wife from 1996 to 1998 and that he worked as a chaperone at an elementary school in the U.S. from 1995 to 1996. The facts in this case reveal that Applicant was not living in the U.S. for three of the years he listed on the application. DOHA alleged Applicant deliberately provided misleading information to strengthen his employment application. (¶ 2.a.)

Guideline E conduct, which involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, could indicate an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

With respect to the Guideline E conduct alleged in the SOR, Applicant's conduct and the record evidence establish the Government's case. Applicant stated he falsified his employment record because he needed a job and an income. His attempts to exonerate his conduct were not credible. Applicant had a duty to provide a prospective employer with a truthful history of his work experience. Failure to do so raises a security concern under ¶ E2.A5.1.1. of Guideline E about Applicant's judgment, trustworthiness, reliability, and willingness to comply with rules and regulations.

Applicant's falsification of relevant and material facts on his employment application raises security concerns under two Guideline E Disqualifying Conditions (DC). His deliberate falsification of relevant and material facts on his employment application raises concerns under DC E2. A5.1.2.2. His concealment of his true record of employment, which he considered insufficient and thereby professionally damaging, could make him vulnerable to coercion and blackmail. DC E2.A5.1.2.4. Applicant's reticence to reveal the truth about his work experience suggests that, under some circumstances, he may put his interests before those of the Government.

Mitigating condition (MC) E2.A5.1.3.1. does not apply to the facts of this case: the information Applicant withheld is pertinent to a determination of his judgment, trustworthiness, and reliability. Two additional mitigating conditions under Guideline E might be applicable to the instant case. The security concern raised by Applicant's disqualifying conduct could be mitigated if the falsification was an isolated incident, was not recent, and if Applicant subsequently provided the correct information voluntarily. MC E.2.A.5.1.3.2. His disqualifying conduct could also be mitigated if he made prompt good-faith efforts to correct the falsification before being confronted with the facts. MC E2.A5.1.3.3. The record shows Applicant supplied the correct information only after being questioned by an authorized investigator of the Defense Department. Additionally, in his answer to the SOR, filed in November 2005, he perpetuated the falsification by refusing to accept responsibility for his conduct and by continuing to blame his uncle for the falsification of his employment application in 1998. I conclude, therefore, that Applicant's falsification was not an isolated incident and occurred recently. Accordingly, MC E.2.A.5.1.3.2. and MC E.2.A.5.1.3.3. do not apply to the facts of Applicant's case. The Guideline E allegation in the SOR is concluded against the Applicant.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6, as amended.

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.: Against Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against 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. Applicant's Nigerian passport is dated October 25, 1977 and identifies Applicant's year of birth as 1973. In a signed statement to a special agent of the Defense Investigative Service, Applicant stated he and his family "returned to Nigeria in 1979 when I was four years old." (Ex. 2 at 2; Ex. 3 at 11-12.)
4. Applicant was 25 years old at the time he completed the application. He admitted his uncle was not his legal guardian but was, instead, acting as an advisor to him. (Tr.48-50.)