

KEYWORD: Foreign influence; Financial; Personal conduct

DIGEST: Applicant, a 20 year emigrant from Nigeria with U.S. military service and a U.S. engineering degree, mitigated foreign influence security concern relating to his mother in Nigeria by showing he had not had a close relationship with her since leaving her home 20 years ago and only communicating with her by e-mail a few times a year with the last telephone contact in 2003. He mitigated financial concerns by establishing that debts to three companies were erroneously listed on his credit report and that two child support delinquent debts were being paid. He failed to list the child support payments on his SF 86 because he believed they were not delinquent since they were being regularly paid. This concern is mitigated under the whole person doctrine based on the totality of his life for the past 20 years. Clearance is granted.

CASENO: 05-03635.h1

DATE: 03/30/2006

DATE: March 30, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-03635

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 20 year emigrant from Nigeria with U.S. military service and a U.S. engineering degree, mitigated foreign influence security concern relating to his mother in Nigeria by showing he had not had a close relationship with her since leaving her home 20 years ago and only communicating with her by e-mail a few times a year with the last telephone contact in 2003. He mitigated financial concerns by establishing that debts to three companies were erroneously listed on his credit report and that two child support delinquent debts were being paid. He failed to list the child support payments on his SF 86 because he believed they were not delinquent since they were being regularly paid. This concern is mitigated under the whole person doctrine based on the totality of his life for the past 20 years. Clearance is granted.

STATEMENT OF THE CASE

On July 29, 2005, 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 August 15, 2005, Applicant responded to the allegations set forth in the SOR, and requested a decision without a hearing. On September 14, 2005, he requested a hearing. The case was assigned to me on October 25, 2005. A Notice of Hearing was issued on November 18, 2005, and the hearing was held on December 6, 2005. The Government introduced six exhibits at the hearing and requested that administrative notice be taken of four. The Applicant introduced seven and all were accepted into evidence. The Applicant testified on his own behalf. The transcript was received on December 16, 2005. The record was left open until January 6, 2006 for submission by Applicant of additional evidence and six additional items were introduced without objection (Exh. I).

FINDINGS OF FACT

Applicant has admitted the factual allegation pertaining to foreign influence under Guideline B, the child support payment allegations relating to financial considerations under Guideline F. He denied the remainder of the financial allegations and the two personal conduct allegations under Guideline E with explanatory information. The admissions are incorporated herein as findings of fact.. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made.

Applicant is a 37-year-old employee of a defense contractor working as a mechanical engineer in a shipyard. He came to the U.S. in 1989 at age 20 from Nigeria. He received his GED that same year and then joined the Navy in 1990. He served for four years and became a U.S. citizen in 1995 (Exh. B). He joined the National Guard and served six years ending in 2003.

Applicant's mother is a citizen of and living in Nigeria. His father is a U.S. citizen as are his two brothers who came to the U.S. with his father in 1976. While living in Nigeria, Applicant moved out of his mother's home at age 17 and lived with his uncle until coming to the U.S. He has not returned to Nigeria since emigrating to the U.S. He communicates with his mother infrequently by e-mail no more than four times a year. The last time he spoke to her by phone was in 2003 concerning a problem of his brother. He has affection for his mother but has limited contact with her and has had little contact for 20 years. While Nigeria is a country with many problems despite it's great wealth (Exh. IV), Applicant's limited contact with it and lack of contact even with his one remaining relative living there, indicates little likelihood of security concern.

Applicant's credit report identified a number of delinquent debts primarily from three companies with which he had not transacted business (Exhs. 4-6). The government dismissed one debt allegation (SOR 2.a.) (Tr. 7), and evidence was submitted that all the debts alleged as owing to the other two companies were erroneously charged to him (Exhs. D, E, and I Items 3, 4, and 6). It also showed two large delinquent child support debts for his two teenage children in the amounts of \$20,000.00 and \$11,000.00. These debts arose while Applicant was not fully employed and enrolled in engineering school during the period 1997-2002. The total debt has been reduced over \$6,000.00 through a Federal tax refund (Exhs. H and I Item 2). He currently pays a total of \$360.00 per month in garnished wages to settle the child support debts for which he is current (Exh. G). Applicant denied having delinquent debts in his responses to Questions 38 and 39 on his SF 86 believing that, since they were being paid, they were not delinquent. He acknowledged one garnishment for one child but not for the second in response to Question 34 relating to garnishments.

After Applicant's discharge from the Navy he worked as a security guard and in other miscellaneous employments from 1997 to 2002 while attending a major U.S. engineering school from which he received his engineering degree in 2002. He has worked for his present employer since graduation. His gross monthly salary before deductions is approximately \$3,000.00 from which he \$500.00 is remaining after paying bills and child support withholdings. He has education debts which have been deferred but he must start payments in 2006. He is not married but is engaged.

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 concerning Foreign Influence-Guideline B provides as a Disqualifying Conditions (DC) 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 an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in a foreign country. (E2.A2.1.2.1) Possible mitigating conditions (MC) that might be applicable are a determination that the immediate family members would not constitute an unacceptable security risk. (E2.A2.1.3.1) 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)

Based on Applicant's admission, the Government established reasons to deny him a security clearance because of foreign influence. 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).

Applicant has very limited contact with his mother not having seen her since leaving Nigeria and not speaking with her by phone for almost three years. He is a participant in the American dream and rejects totally any semblance of loyalty to his former country as shown by the absence of contact with that country. His lack of any travel to Nigeria since his departure 16 years ago and his lack of any desire to return attests to the unlikelihood of pressure being successful. He has sufficiently mitigated this allegation.

Applicant's alleged delinquent debts prompted the allegation of security 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 evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) itigating Conditions (MC) might 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.). The government has conceded the allegation of one debt and Applicant established that all the others except for the child support are erroneous. The child support debts are still outstanding, but are being paid regularly by the garnishment withholding.

Allegations regarding Personal Conduct-Guideline E raise issues of conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. (E2.A5.1.1.) Refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination. (E2.A5.1.1.2.) Conditions that could raise a security concern and may be disqualifying include the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities. (E2.A5.1.2.2.) Conditions that could mitigate security concerns include the fact that the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress. (E2.A5.1.3.5.)

While none of the specific mitigating conditions are applicable to this allegation, Applicant's belief at the time of the filing of his SF 86 that the debts were not delinquent as they were being paid on a regular basis was an understandable one and is credible in evaluating him under the whole person analysis. The fact that he did list one garnishment but not the second indicates a desire to reveal the garnishment proceeding as well as the debt since it fully stated the details of the order.

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 the 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.

Applicant has successfully integrated into the American community with a good job, he is being responsible for his children, and has no loyalty to his country of origin. He continues to have strong affection for the Navy from his military experience and his present work in a shipyard. He manifests total loyalty to the U.S. in his statements and conduct.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is 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 B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Paragraph 2 Guideline F: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: For Applicant

Subparagraph 2.g.: For Applicant

Subparagraph 2.h.: For Applicant

Subparagraph 2.i.: For Applicant

Paragraph 3 Guideline E: FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For Applicant

DECISION

After full consideration of all the facts and documents presented by 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.

Charles D. Ablard

Administrative Judge