

DATE: November 30, 2007

In Re:)
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SSN: -----)

Applicant for Security Clearance)
_____)

ISCR Case No. 07-01831

**DECISION OF ADMINISTRATIVE JUDGE
BARRY M. SAX**

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant was born in Nigeria in 1956. He first came to the United States (U.S.) in about 1976, attended and graduated from college, and became a U.S. citizen in 2004, at which time he also obtained a U.S. passport. In 2006, he renewed his Nigerian passport. After the hearing, he destroyed the Nigerian passport, but did not renounce his Nigerian citizenship. He has extensive family ties to Nigeria. He has not adequately demonstrated mitigation of the Governments evidence under either guideline. Clearance is denied.

STATEMENT OF THE CASE

On July 11, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On August 16, 2007, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me on September 20, 2007. On October 9, 2007, a Notice of Hearing was issued setting the hearing for November 5, 2007. At the hearing the Government introduced four (4) exhibits (Government's Exhibit (GX) 1-4). The Government also offered five Official Notice Documents, which were marked and admitted as Official Notice (ON) Documents I-V. The applicant testified and introduced two exhibits (Applicant's Exhibits (AX) A-B). As post hearing exhibits, he offered four more documents (AX C-F). All exhibits were admitted into evidence. The transcript (Tr) was received on November 15, 2007.

FINDINGS OF FACT

Applicant is a 51-year-old "engineer/scientist" for a defense contractor (GX 1). The SOR contains five (5) allegations under Guideline C (Foreign Preference); and four (4) allegations under B (Foreign Influence). Applicant admits all allegations, with detailed comments. All specific admissions are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, I make the following FINDINGS OF FACT as to the status, past and present, of each SOR allegation.

Guideline C (Foreign Preference)

1.a. Since Applicant became a naturalized United States citizen in 2004, he has exercised dual citizenship with Nigeria and the United States (U.S.). He understands (correctly) that holding dual citizenship is not illegal under U.S. law. He maintained and recently renewed his Nigerian passport because it made it easier to visit his family members in Nigeria. He never used it for any financial, political, or other personal purpose. Because it might affect his security clearance eligibility, he announced his willingness to renounce his Nigerian citizenship and surrender his Nigerian passport (Response to SOR). As of November 12, 2007, Applicant destroyed the Nigerian passport and surrendered it to his company's Facility Security Officer (AX C and AX D). However, as of the closing of the record, Applicant has not demonstrated that he had renounced his Nigerian citizenship.

1.b. Applicant has possessed a valid Nigerian passport that was renewed in 2006 and will expire in May 2011. In his response to the SOR, he announced his willingness to surrender the Nigerian passport. As noted above, on November 12, 2007, Applicant destroyed the Nigerian passport and surrendered it to his company's Facility Security Officer (AX C and AX D).

1.c. - Applicant applied for and was issued a Nigerian passport on June 1, 2006, even though

he became a naturalized citizen of the U.S. on February 25, 2004, and had a valid U.S. passport since February 26, 2004. He renewed the passport because it made it easier to visit his family members in Nigeria. As noted above, on November 12, 2007, Applicant destroyed the Nigerian passport and surrendered it to his company's Facility Security Officer (AX C and AX D).

1.d. - Applicant used his Nigerian passport to travel to Nigeria, as cited in 1.b. and 1.c., above. As cited in 1.a and 1.b., above, he has now destroyed his Nigerian passport and intends to use only his U.S. passport from now on for all purposes (AX C).

1.e. - Applicant owns a house in Nigeria. His family made gift him of the land and he had the house built for his children and any other family members who wished to live there. The fixed location of the house also helps his children who were away at college and need a permanent address.

Guideline B (Foreign Influence)

2.a. - Applicant's children (31, 29, and 25) are citizens and residents of Nigeria. All have a college education and have jobs not connected to the government. Some know basically what he does. Applicant has a close relationship with his children in Nigeria.

2.b. - Applicant's brothers and sisters are residents and citizens of Nigeria. They lead their own lives with their families and he rarely sees them. None have any connection with the Nigerian government.

2.c. - As discussed above at 1.e., Applicant does own a house in Nigeria worth about \$25,000. His net worth in the U.S. is about \$500,000

2.d. - Applicant traveled to Nigeria in 2002, 2004, 2005, and 2007. He travels there to see his family since it is difficult for them to come to the U.S.

Applicant submitted several letters from friends and colleagues. One acknowledges Applicant's employment since 1997 as a Test and Evaluation Engineer (AX A). A second has known and been a friend of Applicant since 1991, while at college. "To [his] knowledge, [Applicant] is hardworking, honest, and trustworthy [and] of excellent moral character" (AX E). A third person has known Applicant at work for about a year. He views Applicant as "personable and honest," a "hard worker who is interested in learning," and who is "rational and works well within a team atmosphere and provides a good service to our department" (AX F). Applicant's fiancée in the United States is expecting their child (AX B).

Applicant states that he stands by the oath of allegiance he took when he became a U.S. citizen in 2004 (AX C). Applicant "came [to the U.S.] to seek a better life. [He] went to school, became an engineer, and . . . has been working [here] since [he] graduated" (Tr at 25). He does not feel he can renounce his family and intends to continue to visit them there, albeit with his U.S. passport (Tr at 26). Neither he nor his family have any contacts with the Nigerian government. His life is in the United States and his fiancée is expecting a baby next Spring and the child will be an American citizen (Tr at 26, 27). Applicant has no intention of moving back to Nigeria. Rather, his intention is to remain in the United States (Tr at 27).

The house in Nigeria was intended to be a gift for his family (Tr at 27). It would be "easy" for him to give up the house in Nigeria if retaining it would cause a problem. (Id.). Since he took the Oath

of Allegiance, he has abided by the rules, paid his taxes, and been a good citizen (Tr at 28).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (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 pertinent 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, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an Applicant to hold a security clearance. An Applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If allegations are denied or otherwise controverted by the Applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

Once the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

Official Notice Documents

Based on the Official Notice documents submitted by the Government, I find the following to be official U.S. policy and findings as to Nigeria:

Nigeria was a former colonial possession of the United Kingdom until gaining independence in 1960. It is a Federal Republic in western Africa and is composed of 36 states and a capital territory. It has a population of about 136 million people, the largest in Africa. The dominant ethnic group in the upper 2/3 of the country is the Hausa-Fulani, the majority of whom are Muslim. Other major ethnic groups in the north include the Nupa, Tiv, and Kanuri. Applicant is from the Edo area of Southern and Midwestern Nigeria, which is predominantly Christian.

Oil is Nigeria's main source of income and the U.S. its major trading partner, mostly because of the oil. Nigeria's "economic team" enjoys an excellent reputation in the international community

(GX 9). Its military of 76,000 receives aid from the U.S. Nigeria has a generally positive reputation in the international community and frequently sends peace keepers to other African nations, upon request. The U.S. is assisting Nigeria in the development of democratic processes (*Id.*). Since becoming independent, Nigeria has experienced periods of political and economic instability and crisis. Political life has been intermittently troubled for long periods by conflict between and among its various ethnic and religious groups. The military has ruled Nigeria for more than half of its 47 years of period of independence. The government's human rights record is generally poor, and is aimed primarily at internal minorities and political opponents.

The U.S. State Department has advised Americans of the risks of robberies and kidnapping aimed at foreigners traveling in that country. Although some crime involves violence, the major illegal activity aimed at foreigners has traditionally been economic fraud scams. I note that none of the Official Notice documents submitted by the Government mentions any espionage or information gathering involving sensitive information and material. Based on this record, I conclude that the national security risk, with which the Government is concerned, is at the lower end of the threat spectrum.

CONCLUSIONS

Guideline C (Foreign Preference) When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to act in such a way

1.a.-1.d. Applicant was born in Nigeria in 1956. His family is part of the "EDO" people on the "south side, the Christian side of Nigeria" (Tr at 15). He lived in Nigeria until age 20, when he came to the U.S. in about 1976. He has been here about 21 years and has worked for his present employer since about 1995 (Tr at 28), without any problems of record.

Applicant became a U.S. citizen in February 24, 2004 (GX 1). He considers himself to be a good citizen (Tr at 28). He renewed his Nigerian passport in 2006 (valid until 2011), in order to facilitate his travel to Nigeria to see his family. His last trip to Nigeria was in January 2007 (Tr at 33). Once he understood the Government's concerns about his retention of the Nigerian passport, he destroyed it in the presence of his employer's Facility Security Officer.

Applicant's intentions as to his Nigerian citizenship was the subject of some discussion at the hearing. As I understand his position on this point, it is that because he is "entitled to have dual citizenship [under U.S. Supreme Court precedent]," he did not intend to renounce that citizenship even though he had destroyed his Nigerian passport (Tr at 34-36). He will renounce his Nigerian citizenship only if he has "a reason" to do so (Tr at 36), but apparently does not believe he has such a reason. At the same time, he is not a fan of Nigeria. In fact he is "bitter about what is going on over there by the government" (Tr at 27).

There is no child support requirement in Nigeria, but Applicant has provided them with money, helped them to attend college, and gave one daughter \$10,000 when she was married (Tr at 42, 43). Applicant speaks with his children one or twice a month (Tr at 44-46). He considers himself to be "very close" with them. The house he had built for them in Nigeria cost about \$35,000 (Tr at 54). His net worth in the United States is about \$500,000 (Tr at 54, 55). When he sends them money, he does so by transferring money from his bank in the United States to a Western Union office in Nigeria where one of his children picks it up (Tr at 48).

With the closing of the record upon receipt of his post hearing submission (AX B), Applicant destroyed his Nigerian passport, but did not renounce his Nigerian citizenship. As was discussed during the hearing, retaining his Nigerian citizenship was a negative factor that would be considered along with all other relevant evidence of record.(Tr at 63-65) After a careful consideration of all the evidence, I am unable to conclude that Applicant has mitigated any questions about his eligibility.

Guideline C (Foreign Preference)

The Concern: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Disqualifying Condition (DC) 10.(a) (1) applies in that Applicant obtained, possessed and used a foreign passport. It has recently been appropriately destroyed; DC 10.(b) is applicable in that Applicant did seek and acquire a Nigerian passport after becoming a U.S. citizen. In addition, Applicant still retains his Nigerian citizenship, which means he can obtain a replacement Nigerian passport.

Of the possible Mitigating Conditions (MC) 11(a) applies in that he acquired Nigerian citizenship because of his being born in Nigeria to Nigerian parents. However, he has since affirmatively exercised that citizenship by asking for and obtaining a new Nigerian passport after becoming a naturalized U.S. citizen. 11.(b) does not apply since Applicant has apparently withdrawn his willingness to renounce his Nigerian citizenship.

Accordingly, Applicant has not clearly demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find against Applicant under Guideline C.

Guideline B (Foreign Influence)

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline should consider the identity of the foreign country in which the foreign contact or interest is located, including but not limited to, such considerations as whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism

2.a and 2b. - Applicant has four grown children and four siblings who are citizens and residents of Nigeria. Under Appeal Board precedent, all eight are considered to be "immediate" family members and Applicant's description of his relationship with them confirms that the relationships must be considered close. I have considered his ties to the United States. He has been here for 21 years, but became a citizen only in 2004. His pending child will be his first family in this country. He travels often to Nigeria to visit his family, and has built a house for them to live in. Nigeria is not listed in official U.S. documents as active in espionage activities against the United States, but it does have a record of terrorist activities, some of which are aimed at U.S. citizens and other foreigners.

Disqualifying Condition - Based on the totality of the evidence, I conclude that DC) 7(a) is applicable because of Applicant's "contact with . . . foreign family members who are citizens or residents of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Mitigating Conditions - None that are established by the record evidence, specifically 8.(a): the presence of so many family members in a country

known for terrorist activities and economic crime.

The record raises additional concerns in that Applicant chose to become a U.S. citizen only in 2004, despite being a resident of this country since 1976.

In summary, and despite the favorable comments from others that he submitted, Applicant has (1) not yet demonstrated an unequivocal preference for the United States, (2) retains his Nigerian citizenship, and (3) has such strong ties to immediate family members in Nigeria as to raise a risk that he might feel forced to choose between his loyalty to his family in Nigeria and his loyalty to the United States.

Considering all the evidence, I conclude that Applicant has not met the mitigating conditions of either Guideline B and C, or the principles behind the "whole person" concept. Consequently, he has not yet demonstrated that he possesses the judgment, reliability, and trustworthiness required of anyone seeking a security clearance.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline C (Foreign Preference)

Subparagraph 1.a.

Subparagraph 1.b. -

Subparagraph 1.c.

Subparagraph 1.d. -

Subparagraph 1.e.

Against the Applicant

Against the Applicant.

Against the Applicant

Against the Applicant

Against the Applicant

Against the Applicant.

Guideline B (Foreign Influence)

Subparagraph 2.a.

Subparagraph 2.b. -

Subparagraph 2.c.

Subparagraph 2.d.

Against the Applicant

Against the Applicant.

Against the Applicant

Against the Applicant.

Against the Applicant

DECISION

In light of all the circumstance 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

v c

BARRY M. SAX

ADMINISTRATIVE JUDGE