



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

ISCR Case No. 07-06126

Applicant for Security Clearance

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel

For Applicant: *Pro Se*

February 6, 2008

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant has failed to mitigate the government's security concerns under Guideline C, Foreign Preference and Guideline B, Foreign Influence. Applicant's eligibility for a security clearance is denied.

On September 24, 2007, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines C and B. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on October 1, 2007, and elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on November 20, 2007. The FORM was

mailed to Applicant on November 28, 2007, and it was received on December 3, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation of the allegations. Applicant did not object to the FORM and did not submit additional information. The case was assigned to me on January 28, 2008.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR with comments. They are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is a 29-year-old architect who has worked for a federal contractor since 2004. He was born in the U.S. in 1977 to Nigerian parents. In 1981 he moved to Nigeria with his parents. He remained in Nigeria where he was educated until he completed high school in 1996. He returned to the U.S. in 1996 and attended college where he received a bachelor's degree in architect in 2001. He returned to Nigeria in December 2002 and August 2003 to visit his family.

Applicant applied for and was issued a Nigeria passport on December 27, 2002. The passport was to expire on December 27, 2007. Applicant provided a statement in his answer that he did not intend to renew it.<sup>1</sup> He traveled to Nigeria and used his Nigerian passport on the two occasions he returned there. He used his Nigerian passport for convenience and so he would not have to obtain a visa from the Nigerian government. Applicant is a dual citizen of Nigeria and the United States.<sup>2</sup> It is unclear if Applicant is willing to renounce his dual citizenship status. In a result of interview document it appears he is willing to renounce his passport and dual citizenship status should it be requested or required.

Applicant's father is a citizen and resident of Nigeria. He is employed as an engineer for the state-run housing department. In June 2007, Applicant filed an immigrant petition for his father to reside in the U.S. No subsequent information was provided to update the status of that petition. The petition is merely an application and it does not grant any immigration status nor guarantee that the alien will subsequently be eligible for a visa.<sup>3</sup>

Applicant's mother is a dual citizen of the U.S. and Nigeria currently residing in the U.S. She is retired from the Nigerian Water Company as an accountant. No information was provided as to what income she subsists on or whether she receives any benefits or pension from the Nigerian government or the Nigerian Water Company.

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<sup>1</sup> Item 2.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 2.

Administrative notice is taken of the facts about Nigeria described in the government's FORM. Four of the six source documents included in the FORM are reports by the U.S. Department of State, the fifth document is from the Congressional Research Service, and the sixth document is a United Nations map of Nigeria.<sup>4</sup> The following facts about Nigeria are highlighted.

- Nigeria is a federal republic in western Africa. Since gaining independence from the British in 1960, Nigeria has experienced periods of political instability. In 1999, Nigeria returned to civilian rule after years of military rule.
- The Nigerian government's record on human rights is poor.
- Violent crime, committed by ordinary criminals as well as by persons in police and military uniforms, can occur throughout the country. Kidnapping for ransom of persons associated with the petroleum sector, including U.S. citizens, remains common in the Niger Delta region.
- A travel warning issued in October 2007 warns U.S. citizens of the dangers of travel to Nigeria and of further deterioration of the security situation in the Niger Delta region.

### **Policies**

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is

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<sup>4</sup> Items 6, 7, 8, 9, 10, and 11.

responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline C, Foreign Preference**

Under AG ¶ 9 the security concern involving foreign preference arises: 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.

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying: I have specifically considered AG ¶ 10 (a) (“exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport... (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country”) and (b) (“action to acquire or obtain recognition of a foreign citizenship by an American citizen”). Applicant was a U.S. citizen when he applied for and was granted a Nigerian passport, based on his dual citizenship status in that country. He then used that Nigerian passport on two occasions to enter Nigeria. He did so for his convenience and so he would not have to obtain a visa. The facts raise both these disqualifying conditions.

I have considered all the mitigating conditions applicable under this guideline. Specifically I have considered AG ¶ 11 (a) (“dual citizenship is based solely on parents’ citizenship or birth in a foreign country”); (b) (“the individual has expressed a willingness to renounce dual citizenship”); (c) (“exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the

individual was a minor”) and (e) (“the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated”). Applicant is a dual citizen of Nigeria and the U.S. Although his duality was originally based on his parents’ citizenship, he obtained a Nigerian passport and used it when he became an adult, thus exercising his Nigerian citizenship. Consequently, Applicant’s dual citizenship is not based solely on his parent’s citizenship. Therefore, mitigating condition (a) and (c) do not apply.

Applicant has expressed a “qualified” willingness to renounce his dual citizenship and give up his passport if it was requested or required. I find this qualified renunciation does not fall within the parameters of (b) and does not apply. Applicant’s passport was to expire on December 27, 2007. Although Applicant expressed his intention not to renew it at the time he provided his answer to the SOR, no subsequent information was provided by him as to its status after its impending expiration or whether he changed his mind and did renew it. There was also no information provided whether he surrendered it, destroyed it, or otherwise invalidated it. Hence, I find (e) does not apply.

## **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding 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 can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of the disqualifying conditions under AG ¶ 7. I have especially considered AG ¶ (a) (“contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion”). Applicant’s father is a citizen and resident of Nigeria and works for its government. His mother is a dual citizen of the U.S. and Nigeria. It is unknown if she receives a pension or subsidy from the Nigerian government or the Nigerian company she worked for before retirement. I find this disqualifying condition applies.

I have considered all of the mitigating conditions for this security concern under AG ¶ 8 and especially considered (a) (“the nature of the relationship with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization and interests of the U.S.”), (b) (“there is no conflict of interest, either

because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests", and (c) ("contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation"). Nigeria is a country that has considerable internal strife, human rights difficulties, and a turbulent criminal element. Americans are warned of the dangers of traveling in the country due to the turmoil and risk to their safety. Applicant failed to provide sufficient information about his relationship with his father, who is a citizen and resident of Nigeria. It is presumed it is a close relationship because he is sponsoring his father for admission to the U.S. Applicant failed to provide any other amplifying information about his father's work, relationship with the Nigerian government, whether he will receive a pension when he retires, and information as to any other contacts he may have. He failed to provide similar information about his mother. No information was provided as to how much contact he has with either his father or mother. Applicant lived most of his life in Nigeria and is a dual citizen. There is insufficient information to determine if there is a conflict of interests and if there was if it would be resolved in favor of the U.S. The facts provided do not support application of mitigating conditions (b) or (c).

## **Whole Person Concept**

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a dual citizen of Nigeria and the U.S. He applied for a Nigerian passport after he was a U.S. citizen. He failed to provide information as to the current status of his passport, so it could not be determined whether it was destroyed, surrendered, invalidated, or, in fact, renewed. His father is a Nigerian citizen and resident who is employed by the government. No other information was provided. Applicant has submitted immigration papers for his father to come to the U.S., but no information was provided as to whether they were approved.

Applicant did not provide enough information to meet his burden to mitigate the security concerns raised.

Overall the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline C, foreign preference, and Guideline B, foreign influence.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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CAROL G. RICCIARDELLO  
Administrative Judge