



ISCR Case No. 07-08168

July 3, 2008

Decision

Applicant replied to the SOR in writing (RSOR) on March 21, 2008, and requested a hearing before an Administrative Judge. I received the case assignment on April 25, 2008. DOHA issued a notice of hearing on May 13, 2008, and I convened the hearing as scheduled on June 2, 2008. The Government offered Exhibits 1 through 5, which were received without objection. Applicant submitted Exhibits A through D, which were entered without objection. Applicant testified, and five other witnesses testified on his behalf. DOHA received the transcript of the hearing (Tr) on June 12, 2008. Based

upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Federal Republic of Nigeria (Nigeria). The request and the attached documents were admitted into evidence as Exhibit 5. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his RSOR, Applicant admitted all of the factual allegations in the SOR. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant and the additional witnesses, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 39 years old and was born in Nigeria in 1968. He moved to the United States in 1992 to pursue a higher education, and he became a naturalized United States citizen in July 2003. Applicant received a Ph.D. and a Master's of Science degree from United States universities, and an additional Master's of Science degree and Bachelor's degree from a university in Nigeria.

Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Applicant was married to his first wife from 1996 to 2004, and he has been married to his current wife since 2004. Applicant has three children. His two children with his current wife were born in Nigeria, but they are United States citizens, and they now have only United States passports. Applicant also has a stepson that he has not seen since 1992.

The following concerns allegations as cited in the Statement of Reasons:

1.a. Applicant's wife is a citizen of Nigeria, and she resides in the United States. She moved to the United States in January 2006. Applicant's wife testified that in a few months, when she is eligible, she is planning to apply for United States citizenship. She will give up her Nigerian citizenship once she becomes an American. While she is currently not employed, she was a medical doctor in Nigeria, and she has been preparing for and taking examinations so that she may practice medicine in the U.S.

1.b. Applicant's mother, son, mother-in-law, half brother, four sisters, and one brother are citizens and residents of Nigeria. Applicant's mother is 72 years old. He last spoke to her in December 2007, and before that in January 2007. He can only reach

her by calling his sister, who then will transport her to where a phone is located. His mother owns palm fruit trees, and she hires people to harvest them, which is how she receives her income. Applicant speaks to one of his sisters only as a means to contact his mother. He has had no contact with any of his other sisters since he was last in Nigeria. Applicant has not spoken to his brother who lives in Nigeria in many years. The mother of Applicant's wife, is a Nigerian citizen and resident, but neither Applicant nor his wife has a close relationship with Applicant's mother-in-law. None of Applicant's relatives in Nigeria works for or is associated with the Nigerian government.

Applicant also has two younger brothers who reside in Italy. Finally, Applicant has a stepson. At one time, Applicant represented himself to be this boy's biological father, for the child's benefit, although he never was. Applicant has had no contact with this boy since 1992.

1.c. Applicant traveled to Nigeria on the following dates: December 1998, December 1999, September 2003, September 2004, and December 2004.

Applicant testified as to the reasons that he traveled to Nigeria. In December 1998, he attended the funeral of the mother of a friend, whom he had known in the United States. In December 1999, he visited his own mother in Nigeria, who was ill and had recently had a heart attack. His other trips were also to visit his mother who remained in failing health, and also his last visit was to do the necessary paperwork so that he could marry his current wife. Applicant has no current plans to visit Nigeria in the future, but hopes to be able to return when his mother dies, for her funeral.

Neither Applicant nor his wife owns any property in Nigeria. They do own a home in the United States, and he estimated his net worth in the United States at approximately \$750,000.

Applicant testified persuasively that he has no emotional ties to Nigeria, but he has very strong feelings of love and loyalty for the United States. After he became a U.S. citizen, he returned his Nigerian passport and revoked his Nigerian citizenship.

As stated above, Applicant had several individuals testify on his behalf. The first witness is the chief scientist for another company, who was the former direct supervisor of Applicant. Witness A described Applicant as "an extremely reliable person . . . I would trust him with anything." (Tr at 111).

The second character witness who testified on behalf of Applicant, is a manager at the same employer as Applicant, and has known him for more than two years. Witness B testified that Applicant is "Conscientious and Dedicated." He further agreed that Applicant's work was credible and reliable.

The third witness is the section manager of Applicant's current employer, and he supervises Applicant's work. Witness C testified that Applicant is "diligent and hardworking. As meticulous as he can be. Persevering." He also agreed that Applicant is trustworthy and reliable.

The fourth and final witness for Applicant is a director for his current employer and his immediate supervisor. Witness D described Applicant as “diligent and serious about his work. A good employee. Dependable.” (Tr at 142). He also indicated that Applicant is trustworthy.

Status of Nigeria

I take administrative notice of the following facts regarding Nigeria. Nigeria is a federal republic in western Africa composed of 36 states and a capital territory. Since Nigeria gained independence from Britain in 1960, it has experienced periods of political instability and turmoil, in addition to economic crisis. While Nigerian political life has had periods of conflict in both ethnic and geographic areas, and the military has ruled for approximately 28 years since its independence, it has been under civilian rule since 1999.

Nigeria is Africa’s most populous country with more than 250 ethnic groups, and a majority of its population suffers from extreme poverty. Areas of Nigeria are marked by serious instability, and religious, political and ethnic factions have been involved in armed conflict.

Finally, the human rights record of the Nigerian government is poor, as it continues to commit serious human rights abuses, including politically motivated and extrajudicial killings by security forces, torture arbitrary arrests, and judicial corruption.

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 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 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 (DC). Those that could be applicable in this case include the following: (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; and (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion. Applicant’s relatives, including his mother, sisters, brother,

mother-in-law and son, who are citizens and residents of Nigeria, make DC (a) a concern to the Government. His wife, who is still a citizen of Nigeria, and whose mother is both a citizen and resident of Nigeria, make DC (d) applicable.

AG ¶ 8 provides conditions that could mitigate security concerns (MC):

(a) the nature of the relationships 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, or government and the 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 interest in favor of the U.S. interest.

I find that MC (b) is applicable to this Applicant and controlling for the following reasons: Applicant, who is 39 years old, has lived in the United States for 16 years and been a U.S. citizen for 5 years. While he is married to a Nigerian citizen, she is planning to apply for U.S. citizenship within the next few months when she will be eligible to apply. She is also studying and testing so that she may be able to practice her profession of being a medical doctor. Applicant and his wife's two children are being raised solely as U.S. citizens and residents.

Applicant has received his primary education of a Masters of Science degree and a Ph.D. degree in the United States, which is the only country in which he has been employed. He has no assets in Nigeria, and estimates his assets in the United States worth approximately \$750,000.

Of all his relatives in Nigeria, the only person with whom he has a close relationship is his mother, who is 72 years old and in failing health. While his testimony is not controlling, Applicant did testify credibly that if he received a threat that his mother would be injured or killed if he did not comply with requests to provide classified information, he would report any such threats to his employer's security officer rather than cooperate with the threatening parties. Applicant did testify that he was totally committed to the United States and had no feelings for Nigeria. Finally, the witnesses who testified on Applicant's behalf were credible and persuasive that Applicant is an individual of high moral character and someone who can be trusted.

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. Based on all of the reasons cited above as to why MC (b) applies, I also find that the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole person concept. For all these reasons, I conclude Applicant mitigated the security concerns.

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 B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge