



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 07-10635
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: Oni A. Holley, Esquire, Meredith Carter, Esquire

November 12, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on April 18, 2006. On April 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under foreign preference (Guideline C), foreign influence (Guideline B), and financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his answer to the SOR on May 15, 2008. DOHA issued a notice of hearing on August 19, 2008, and the hearing was held on September 10, 2008. The transcript was received by DOHA on September 19, 2008.

At the hearing, the government submitted eight exhibits (GE 1 through 8). Administrative Notice was also taken of several documents from United States

Government agency publications that describe the government of Nigeria, its human rights record, and various problems U.S. citizens face in traveling to the country. I shall also take administrative notice of Applicant's Administrative Notice Memorandum, including two decisions from other Administrative Judges, being offered for that purpose.

At the hearing, two witnesses testified in Applicant's behalf. Applicant also testified and presented nine exhibits (AE A through AE I), that were received in evidence without objection. AE F through AE I were offered following the hearing. AE F is an affidavit from Applicant's security officer. AE G is a letter from Applicant's church regarding his travel in 2003. AE H is a letter from a collection firm regarding a debt described in SOR 3.c. AE I is a Nigerian passport that expired in June 2004. In AE J, Applicant's additional comments to the SOR three pages in length, Applicant indicates he is an associate pastor and head of the council of his church, responsible for the financial and administrative resources of the church. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Rulings on Procedure

In a Memorandum For Administrative Judge Regarding Post Hearings Submissions, filed on October 2, 2008, Department Counsel stated the government had no objection to AE F through AE I, but made certain observations which have been duly noted.

Findings of Fact

The three guidelines alleged in the SOR are foreign preference, foreign influence, and financial considerations. Applicant admitted some allegations and denied others. Applicant's admissions shall be incorporated in the factual findings. Applicant is 45 years old, married with three children. He seeks his first security clearance. He has been employed as a project coordinator and program manager with his current employer since June 2004.

Applicant was born in Nigeria on March 10, 1963. He began undergraduate school in 1979 and received his Bachelor of Science degree in 1985. He immigrated to the U.S. in 1989 (Tr. 58) to find better opportunities in life, and has voted in every U.S. election. (Tr. 59) He considers the U.S. his home. (*Id.*)

Applicant received his U.S. citizenship on March 21, 2003, and his U.S. passport on March 31, 2003. As indicated in SOR 1.b., when he answered interrogatories on November 30, 2007, Applicant had a Nigerian passport that was issued in September 2005, with an expiration date of September 2010. (GE 2) When Applicant was issued the Nigerian passport, he already had a U.S. passport that he was issued in March 2003. See, SOR 1.c. Applicant obtained the passport because he believed that there is a certain bias that exists in the consular community against Nigerians who seek

citizenship in another country. (Tr. 69) In 2005 and 2006, as alleged in SOR 1.d., Applicant used his Nigerian passport instead of his U.S. passport for travel in and out of Nigeria (Tr. 70, 113)

Applicant turned in his passport on September 9, 2008 to one of the federal facility security officers (FSO) for the federal disease control agency. (Tr. 72; AE B) On September 16, 2008, Applicant's Nigerian passport was transferred to the FSO of Applicant's employer since the FSO for contractor employees, not the FSO for federal employees, has authority to assume custody over foreign passports. (AE F) When asked why he waited so long to surrender his passport after receiving the SOR in April 2008, he replied he was very busy at work with hurricane responses, and was recently advised by his attorney to turn the passport over to the FSO. (Tr. 123) Applicant did not seek advice from anyone from DOHA on how to relinquish the passport. (Tr. 124) Applicant opined that if he had known that having a Nigerian passport would cause a security problem, he would not have applied for it. (Tr. 70-73)

Foreign Influence

SOR 2.a. Applicant's wife was born in December 1963. She immigrated to the U.S. on a student visa in 1989 to begin graduate school. In 1989, she completed a Master's degree in Communications in the U.S. She married Applicant in March 1993 (GE 1), and not March 2003. (Tr. 60, 65, 105) She has her permanent resident card. She did not apply for citizenship in 2000 when first eligible because she was not interested in becoming a U.S. citizen; she applied on September 9, 2008. (Tr. 105) Due to a debilitating health condition that makes it difficult for her to sustain employment, Applicant's wife has not been employed since his two-year period of unemployment between May 2002 and June 2004. Applicant and his wife have three children, all born in the U.S. The first was born in December 1993, the second in March 1995, and the third in February 2000. (GE 1)

SOR 2.b. Applicant's father and stepmother are resident citizens of Nigeria. His father was born in April 1933. Applicant's mother is deceased. The father, formerly an associate director of a Nigerian radio corporation, retired after a military coup in 2004, and lives on a pension. (Tr. 65) As noted below, he also receives income from commercial buildings he owns. Applicant is very close to his father (Tr. 64), and telephones him about twice a month, but estimated his wife's communication with her parents was more frequent. (Tr. 66) Applicant sent his father about \$500.00 in 2005 and 2006 to address immediate medical problems. (Tr. 64, SOR 2.g.) Applicant no longer sends money as his father is financially self-sufficient now. (Tr. 115) Applicant's father tried to immigrate to the U.S. about 1 ½ years ago, but his visitor's visa was denied based on his inability to show sufficient ties to Nigeria. (Tr. 130; AE 8) After realizing his father needed better medical attention, Applicant believes that circumstances warrant his father seeking a more permanent resident status in the U.S. (Tr. 131)

Regarding the subject of foreign financial interests, Applicant testified he owned no assets, but his father owns some land and a home or two located in Nigeria, and he

has an option to inherit the property. (Tr. 140) Applicant could not apply a value to the property because he asserted he has been in the U.S. for about 20 years, and he knew very little about the Nigerian property market. (Tr. 141) He was able to give some description of the property. He stated, "What it is - - is just commercial buildings that he leases out to business people and they operate their business out of these areas an you collect from." (*Id.*)

Applicant's stepmother was born in Nigeria in April 1935. She holds a U.S. permanent resident card and is currently living with her sons in a state in the western part of the U.S. Applicant's last contact with her was about 1 ½ years ago. According to Applicant, she visits the U.S. occasionally. (Tr. 137)

SOR 2.c. In his answer, Applicant admitted he had a brother who is a resident citizen of Nigeria. However, there are no references in GE 1, GE 3, or the transcript to a brother who is a resident citizen of Nigeria. Applicant furnished testimony about his stepbrother who lives on the west coast of the U.S. The step brother is a U.S. resident alien who served in the U.S. Navy, and is pursuing a career in the pharmaceutical industry. (Tr. 61, 62) Because the relative was not correctly identified in the allegations of foreign influence, SOR 2.c. is found for Applicant.

SOR 2.d. Applicant's mother-in-law was born in Nigeria in August 1940, and is a resident citizen of the country. She has always been a homemaker. Applicant's father-in-law was born in Nigeria in October 1935. He was a professor at a college in the Midwest until 2002, when he and his wife relocated Nigeria. (GE 3) The father-in-law is retired, and also is an education advisor to one of the state governments of Nigeria. (Tr. 67; SOR 2.e.)

SOR 2.f. Applicant traveled to Nigeria about five to six times in the last six years, but remembered visits in 2003, 2004, 2005, and 2006. (Tr. 62, 113) Because he had not seen his family for some time, and also had not seen the country since 1989 (Tr. 62-63), particularly his ill father, Applicant visited the country in 2003. He financed his first trip in 2003 with his own money. All his visits to see relatives lasted about two weeks. (GE 3)

Applicant has an older sister who was born in Nigeria in November 1961. She is a naturalized U.S. citizen, and employed as an administrative law judge in a northeastern part of the U.S. (Tr. 61; GE 3) A younger sister, born in Nigeria in August 1964, is a naturalized U.S. citizen and an attorney with a federal maritime agency in the middle Atlantic region of the U.S.

In his interview (GE 3) with an investigator with the Office of Personnel Management (OPM), Applicant indicated he could not be pressured into disclosing information to a foreign entity. No one has ever threatened or pressured him to divulge classified information. Applicant indicated his allegiance is with the U.S. Applicant testified he would abide by security rules by disclosing any effort to pressure or influence him. (Tr. 101)

Financial Considerations

In GE 3, Applicant attributed his financial problems to his unemployment from May 2002 to June 2004. During the period he was to survive for a time on his severance package from his previous employment. Then, he had to depend on his savings, unemployment compensation, and sporadic monetary dispensation from the church. He tried to resolve his debts through two Chapter 13 petitions (SOR 3.a., 3.b.), but both petitions were dismissed because the payments were too large.

SOR 3.c. The creditor filed a judgment against Applicant in April 2003 for \$9427.00. (AE C) The amount is currently \$15,010.00 as noted in the SOR. Applicant has not paid the debt because he is waiting for a reasonable payment plan. (Tr. 82) AE H shows that the collection firm offered Applicant a judgment payoff of \$14,041.00 that expired on April 23, 2008.

SOR 3.d. The credit card creditor is due \$8,927.00. Applicant recalls he was a user on this card. (Tr. 82, 83, 159) There is no record of action on this debt.

SOR 3.e. The revenue debt was paid in March 2008 (AE A) and the account was deleted. (AE D, credit agency dispute resolution reporting mechanism) The account no longer appears in GE 6.

SOR 3.f. The tax debt of \$1,809.00 was paid in December 2004. (AE C)

SOR 3.g. The collection account reflects a zero balance based on GE 7 and AE D.

SOR 3.h. The account does not appear in GE 7. AE D reflects the account was deleted. Applicant never had an account with this bank. (Tr. 163)

SOR 3.i. The telephone account does not appear in GE 7, and according to AE D, was disputed account was deleted.

SOR 3.j. This account is not addressed in AE D, but it does not appear in GE 7.

Applicant believes that the errant accounts appear in his credit report due to a security breach that occurred at his employer. (Tr. 166)

Applicant currently earns about \$65,000.00 from his employer (Tr. 154), and has a monthly remainder of between \$500.00 and \$700.00 a month. (Tr. 175) He owns a 1994 auto that is paid for. His wife drives a 2004 car. (Tr. 177) Applicant's current rent is approximately \$1,800.00 a month. Applicant and his wife have tried to keep control over their expenditures by following a budget. Having carefully compared GE 7 with AE C and AE D, the only delinquent financial accounts are the judgement identified in 3.c. of the SOR, and the charge card account reflected in 3.d. The judgment and the credit card account total almost \$24,000.00.

A review of GE 7, AE C, and AE D reflects Applicant settled with four creditors (listed and unlisted in the SOR) in an amount totaling approximately \$7470.00

Character Evidence

Ms. A, the tax management group lead, explained that her job includes monitoring the account measures that store the pharmaceutical stockpile of drugs. She met Applicant on her first day of work in June 2005. Ms. A considers Applicant trustworthy and also knowledgeable about the information needed at the job. Ms. A explained that the contractor and the stockpile project schedule annual training sessions for contractor or employees and federal employees that address sensitive information issues and procedures that an employee should take if he is pressured for sensitive information. (Tr. 33)

Mr. B, the lead response specialist and a federal employee, testified his duties include the stockpile project. When he was a contractor employee in 2004, he hired Applicant (Tr. 42) and was his supervisor for several months, and now as federal employee, reviews the billing that Applicant submits. During his testimony regarding Applicant's excellent job performance, Mr. B considers Applicant dependable, and cited an example of completing some accounting work or balancing the books at the end of a fiscal period. The accounting work involved electronically connecting to the computers at the stockpile project while Applicant was in Nigeria. (Tr. 44) Applicant performed this accounting work or "closing the books" periodically. (Tr. 52) Mr. B believes Applicant is trustworthy. (*Id.*)

Applicant received an award for distinguished service from a federal agency in June 2006 for his work during the three major hurricanes in 2005. (AE E) AE G is a letter dated September 15, 2008 from the senior pastor describing the church's decision to send Applicant to Nigeria in April 2003 to reorganize the church's operations in the country, and to provide him with an opportunity to see his ailing father; the church agreed to pay his airfare.

Administrative Notice

I have taken administrative notice GE 4 that consists of the following government documents:

U.S. Department of State, Bureau of African Affairs, *Background Note: Nigeria*, dated April 2008;

U.S. Department of State, *Consular Information Sheet, Nigeria*, dated April 16, 2007;

U.S. Department of State, *Travel Warning: Nigeria*, dated October 30, 2007

U.S. Department of State, *Nigeria: Country Reports of Human Rights Practices-2006*, dated March 6, 2007; and,

Congressional Research Service, CRS Report for Congress, *Nigeria: Current Issues*, January 30, 2008.

Nigeria, since gaining its independence in 1960, has been controlled more by military rulers than democratically elected civilian rulers. Even though the government returned to civilian rule in 1999, the government continues to have a poor human rights record. The lack of law and order in various areas of the country results in internal, periodic armed conflicts between religious, political and ethnic factions, and also creates strife for U.S. citizens traveling to the country, particularly in the Niger Delta region. The problems emerge in the form of kidnaping and shakedowns at checkpoints. Recognizing the troubling problems in the Niger Delta region, the current president, elected in May 2007, has pledged to restore peace and security to the region, while instilling long-term, electoral reform throughout the country. President Bush considers Nigeria an important partner in the war on terror.

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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. Reasonable 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

Analysis

Foreign Preference (FP)

9. *The Concern.* When an individual acts in such a way as to indicate a preference for a foreign country over the U.S., then he or she may be prone to provide information or make decisions that are harmful to the interests of the U.S. ¶ 9.

When Applicant obtained and used his Nigerian passport in 2005 and 2006 after receiving his U.S. citizenship and passport in March 2003, he was exercising dual citizenship. FP DC 10.a.(1) (*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 - possession of a current passport*) applies. Possession, renewal and/or use of the foreign passport after being naturalized as a U.S. citizen constitutes the exercise of a privilege of his Nigerian citizenship that he was not entitled to.

Applicant's dual citizenship is based on more than his birth in a foreign country. Hence, FP MC 11.a. (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*) is not applicable. Though Applicant has provided statements concerning his willingness to renounce his Nigerian citizenship, there has been no action to support these statements. Therefore, there is insufficient evidence in the record to confer meaningful consideration to FP MC 11.b. (*the individual has expressed a willingness to renounce dual citizenship*)

FP MC 11.e. (*the passport has been destroyed, surrendered to the cognizant authority, or otherwise invalidated*) indicates in unequivocal language that if the person wants to demonstrate his intent to relinquish his foreign citizenship, then he must take action set forth in the mitigating condition. Even though Applicant may not have taken sufficient action to revoke his dual citizenship, he complied with FP MC 11.e. On September 9, 2008, Applicant surrendered his passport to the FSO. Within seven days, Applicant's Nigerian passport was transferred to the appropriate official to maintain permanent custody over the passport. The surrender of the passport, while taking more

than four months to consummate, complies with the FP mitigating condition and warrants a conclusion for Applicant under the FP guideline.

Foreign Influence (FI)

6. *The Concern.* “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 U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.” ¶ 6.

The mere possession of family ties in foreign country is not automatically disqualifying under the foreign influence guideline. However, one relative living in a foreign country creates the potential for foreign influence. When assessing the family ties, it is important to weigh the totality of these ties in a foreign country, rather than trying to weigh them in isolation. ISCR Case No. 01-22693 at 7 (App. Bd. Sept. 22, 2003)

In determining whether FI disqualifying condition (DC) 7.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*) applies to this case, an evaluation of factors other than the citizenship and residence of the family members, including the political character of the foreign country in question, its relationship to the U.S., and the prospects an applicant’s family members may be subject to pressure or coercion. If the foreign family member is associated/employed or dependent on the government, or the government is authoritarian, then the chances for foreign influence directed to and through the foreign family member are more likely. Even friendly nations commit acts that infringe upon another nation’s sovereignty. Significantly, there is no evidence of the Nigerian government targeting U.S. citizens for protected information. Yet, criminal activity continues to present significant dangers throughout areas of Nigeria, even though the present leader is determined to improve the overall peace and security in the country.

The citizenship/residence status of Applicant’s father and stepmother, his trips to Nigeria, and the money transferred to his father in 2005, create a heightened risk of foreign influence under FI DC 7.a. This heightened risk for foreign influence is magnified by the option Applicant has to inherit his father’s property.

Regarding Applicant’s mother-in-law and father-in-law, the DOHA Appeal Board has held that there is a rebuttable presumption that an applicant has close ties of affection, or at least obligation, to members of his wife’s family. ISCR Case No. 01-

03120 at 8 (App. Bd. Feb. 20, 2002). Therefore, the heightened risk of foreign influence extends to Applicant's mother-in-law and father-in-law who are resident citizens of Nigeria.

The citizenship of Applicant's wife in Nigeria, and residence in the U.S. invokes the application of FI DC 7.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*)

Only Applicant's father-in-law is employed by one of the Nigerian state governments as an advisor on educational matters. He is not connected to the military or a security position within the government of Nigeria. None of Applicant's other, immediate family members work for the government of Nigeria. None are agents of the country's government. Applicant's wife is a homemaker, partly due to her health condition. She has her permanent resident card and is applying for her U.S. citizenship. His father draws a pension in his retirement from a civil servant job with the national radio corporation. According to Applicant, he also derives earnings from space he leases in his commercial buildings. Applicant's mother-in-law is a homemaker. Her husband (Applicant's father-in-law) is semi-retired and works as an education advisor for one of the states in Nigeria. Applicant no longer sends money to his father because of his self-sufficiency. The close ties Applicant has to his father, mother-in-law and father-in-law, who are resident citizens of Nigeria, and the close ties he has with his spouse, a citizen of Nigeria and resident of the U.S., creates a heightened risk of foreign exploitation, pressure or coercion for Applicant because of the law and order problems in Nigeria. This heightened risk for foreign influence has not been established regarding his stepmother who he has not had contact with for about 1 ½ years.

FI DC 7.a. can potentially be mitigated by FC mitigating condition (MC) 8.a. (*the nature of the relationships with foreign persons, the country in which these persons are located, or the position 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.*); FI MC 8.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 minimal, or the individual has such deep and long-lasting 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*); and FI MC 8.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*) First, Applicant's contacts with his father, mother-in-law and father-in-law are not casual nor infrequent. He has regular contact with his father, and sent him money in 2005 and 2006. Applicant's close relationship with his father is substantiated by the fact he has an option to inherit his father's property. The record reflects that through his wife, Applicant has a close relationship with his mother-in-law and father-in-law. The inheritance option that Applicant has to his father's property, notwithstanding his inability to apply a value, precludes a finding that Applicant can be expected to resolve any conflict of interest in favor of the U.S.

Reviewing the evidence for longstanding relationships in the U.S., the American citizenship of Applicant's two sisters involved in the legal profession constitutes favorable evidence of ties Applicant has in the U.S., even though the extent of that relationship was not developed in the record. Applicant's three children, U.S. citizens, establish additional evidence of his bonds to this country. However, neither his bonds to immediate family members or his professional ties for the last four years are sufficient to remove the heightened risk of foreign inducement or coercion created by his spouse, a citizen of Nigeria living with Applicant, and his father, mother-in-law, and father-in-law who are resident citizens of Nigeria. Viewing the totality of the evidence, I am unable to conclude that Applicant can be expected to resolve any conflict of interest in favor of the U.S. On balance, while his stepmother is removed as a security concern under FI MC 8.a., the evidence adduced under FI MC 8.a., FI MC 8.b., FI MC 8.c. does not sufficiently remove the foreign influence concerns associated with Applicant's spouse, his father, mother-in-law, and father-in-law.

Financial Considerations (FC)

18. *The Concern.* "Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts."

This case activates FC disqualifying condition (DC) 19.a. (*inability or unwillingness to repay debts*) and FC DC 19.c. (*a history of not meeting financial obligations*) based on the SOR 2.c. and 2.d. debts totaling almost \$24,000.00 that are still outstanding. A history of not meeting financial obligations is underscored by the existence of the judgment (SOR 3.c.) since 2003.

FC mitigating condition (MC) 20.b. (*the conditions that resulted in the financial problem were largely beyond the individual's control, and the individual acted responsibly under the circumstances*) and FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) receive some consideration based on Applicant's unemployment from May 2002 to June 2004, and his responsible conduct in paying off four debts totaling \$7470.00 since 2004. The fact that he was successful in having certain debts correctly deleted from his credit report constitutes evidence of good judgment also. Considering all the evidence presented under the FC guideline, including his wife's inability to work and the cost requirements in raising their three children, Applicant is making a good faith effort to work out a settlement with one of the two delinquent accounts demonstrated by AE H, the notification from the collection firm in SOR 2.c. advising Applicant of a payoff figure he could not meet. I believe he will continue to meet the remaining past due obligations. The FC guideline is resolved in his favor.

Whole Person Concept (WPC)

My finding for Applicant under the FI and FP guidelines must still be evaluated in the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors: (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) the extent to which the participation was 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.

The disqualifying and mitigating conditions have been considered in light of the evidence as a whole. Applicant has met his burden of persuasion under the foreign preference guideline by surrendering his passport in September 2008. Concerning the foreign influence guideline, Applicant's character evidence from Ms. A and Mr. B weighs heavily in his favor, along with the recognition Applicant received for his contributions during the hurricane season of 1995. I have considered his position in his church, and his sisters being naturalized U.S. citizens. However, his inheritance option of commercial buildings as he described them, even though he was unable to apply a value, and his close ties with his wife, a citizen of Nigeria, and the other identified family members who are resident citizens of Nigeria raise continuing security concerns about his vulnerability to coercion or influence. Applicant has not mitigated the security concerns that remain regarding foreign influence. The two financial debts that currently total almost \$24,000.00 occurred when Applicant was unemployed. His document payment of four of the overdue debts in the last four years provides sufficient grounds to believe he will satisfy the remaining creditors. Though Applicant has mitigated the foreign preference and financial considerations guidelines, he has failed to mitigate 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 (Foreign Preference, Guideline C):	FOR APPLICANT
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant

Subparagraph 2 (Foreign Influence, Guideline B): AGAINST APPLICANT

Subparagraph 2.a.	Against Applicant
Subparagraph 2.b.	Against Applicant
Subparagraph 2.c.	For Applicant
Subparagraph 2.d.	Against Applicant
Subparagraph 2.e.	Against Applicant
Subparagraph 2.f.	For Applicant
Subparagraph 2.g.	Against Applicant

Paragraph 3 (Financial Considerations, Guideline F): FOR APPLICANT

Subparagraph 3.a.	For Applicant
Subparagraph 3.b.	For Applicant.
Subparagraph 3.c.	For Applicant
Subparagraph 3.d.	For Applicant
Subparagraph 3.e.	For Applicant
Subparagraph 3.f.	For Applicant
Subparagraph 3.g.	For Applicant
Subparagraph 3.h.	For Applicant
Subparagraph 3.i.	For Applicant
Subparagraph 3.j.	For Applicant

Conclusion

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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge