



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 07-10993
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. Delaney, Esquire, Department Counsel
For Applicant: Pro se

June 24, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA) on November 8, 2006. On January 3, 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 personal conduct (Guideline E). 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 January 29, 2008. DOHA issued a notice of hearing on April 1, 2008, and the hearing was held on April 22, 2008. Based on a careful evaluation of all the evidence in the record, Applicant's eligibility for security clearance is denied.

At the hearing, the government submitted four exhibits (GE). The fourth exhibit (administrative notice exhibit) contains facts from United States Government (State Department) agency publications that describe the government of Nigeria, its human rights record, and various problems U.S. citizens face in traveling to the country. Applicant testified and submitted one exhibit (AE A) relating to a bank account he has in Nigeria. Following the hearing, Applicant submitted diversity visa entry forms for four of his relatives. In By Memorandum dated April 25, 2008, Department Counsel indicated he had no objection to the documents (diversity visa entry forms) being admitted in evidence. Accordingly, AE C is admitted into evidence, and is now a part of the record. The record in this case closed on April 25, 2008. DOHA received the transcript on May 1, 2008.

Procedural Ruling

Attached to Applicant's answer are five documents that are photocopies of his Nigerian passport and United States (U.S.) passport. Those documents are relabeled AE B, and have been *sua sponte* entered in the record.

Findings of Fact

Applicant admitted the three allegations under the foreign preference guideline with explanations. He admitted the seven allegations under the foreign influence guideline, and the one allegation under the personal conduct guideline with explanations. The primary point of his answer to the SOR is that he did not intend to deceive the government about his Nigerian passport under the foreign preference guideline or the personal conduct guideline.

Applicant is 37 years old and has been employed as a systems administrator by a defense contractor since January 1999. He seeks a secret security clearance.

Applicant was born in Nigeria in April 1971. He came to the United States in 1988. He met his wife (a Nigerian by birth) in 1992, and married her in June 1995. His wife gave birth to their first child in 1995. Applicant entered the U.S. Air Force Reserves in 1997. In May 2002, Applicant became a U.S. citizen. His wife was naturalized in July 2002. Applicant was honorably discharged from the U.S. Air Force on August 26, 2005.

Applicant's U.S. education began in June 1996 at a local university where he started his undergraduate study for a Bachelor of Science. He was awarded the degree in June 2001. He also enrolled in graduate studies at the same school, and hopes to receive his Masters of Science degree in Computer Technology in December 2008. In February 2002, Applicant completed a three-month course in systems administration. He completed a one-month course for a systems administrator II position in August 2002.

Foreign Preference

Applicant indicated in his answer to the SOR that he does not practice dual citizenship. (SOR 1.a.) He also indicated his allegiance is to the U.S. only. The record reflects that after being naturalized as a U.S. citizen in May 2002, and after obtaining his U.S passport in July 2002, Applicant renewed his Nigerian passport in June 2004 (Tr. 106), and used the passport in December 2004. (AE C, Tr. 86)

On November 8, 2006, Applicant certified¹ through his signature on the last page of a security clearance application (GE 1, SCA) that the entries on the form were truthful. On page 33 of the exhibit, he indicated that he had a Nigerian passport that was issued to him in August 1988, with an estimated expiration date of June 2004. (SOR 1.b.) Applicant admitted the SOR allegation, but claimed his words identifying the expiration of the Nigerian passport resulted from an oversight when he was completing the SCA, and even though he had 30 days to complete the security form. (Tr. 131) He then claimed he actually lost the passport, and reported the loss twice to the Nigerian Embassy in October 2006. They told him to file a police report. He provided no documentation of his contact with the Embassy or a police report. The correct expiration date appearing in a xerox copy of the passport is June 2009. (AE B) Applicant admitted under SOR 1.c. that he used his Nigerian passport for travel to Nigeria from December 2004 to January 2005, because he did not know of the prohibition against using a foreign passport after receiving U.S. citizenship.

Foreign Influence

Applicant's mother passed away in July 1977 and his father in July 2000. Applicant's stepmother (SOR 2.a.) is 44 years old (GE 1), and a resident citizen of Nigeria. Once a year, he relays a message to her through a friend. He last saw her during his trip in December 2004 for his friend's wedding. Applicant is not obligated to provide for her in any way. None of Applicant's relatives know he is applying for a security clearance.

Applicant's siblings and half-siblings are resident citizens of Nigeria. The abundant number of siblings is due to his father having three wives. (Tr. 46) Applicant has a 50-year-old sister who was born in Nigeria and still lives there. She is a farmer. He last saw her during his visit in December 2007. Applicant has a second sister who was born and lives in Nigeria. She is a farmer. (Tr. 43-44) The record does not reveal her age. Applicant saw her during his visit in December 2007.

Applicant has a brother who is a resident citizen of Nigeria, and who works for an oil company. Though Applicant could not recall his age (Tr. 45), he told the investigator in GE 2 his brother was 45 years old, and was a half-brother. In conversations with this

¹ "My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both. (See section 1001 of title 18, United States Code)."

brother or half-brother (employee of the oil company) two or three times a year, they talk about family matters.

Another half-brother is a truck driver who is currently unemployed. (Tr. 46) A half-sister that Applicant believes is 44 years old, is a resident citizen of Nigeria. She is employed as a farmer. Applicant communicates with her through her son (Applicant's nephew). The nephew is 25 years old, and Applicant is sponsoring him for immigration. (AE C) Another half-brother who was born and resides in Nigeria, is a carpenter, but Applicant is unsure about his age.

Applicant identified another sister who is 42 years old, and a resident citizen of Nigeria. She is a farmer. Applicant speaks to her through his 44-year-old half sister referred to in the previous paragraph. Another brother was born in Nigeria, and still resides there. He is 35 years old. He is a trader in shoes and material used in the assembly of clothes. (Tr. 53) Applicant sponsored him through the lottery visa. (AE C) Applicant has two other sisters who are resident citizens of Nigeria. According to Applicant, one may be 20 years old and a nurse (Tr. 55). AE C reflects she is 32. Applicant did not know the age of the other sister who may be a secretary in a local government in Nigeria.

Applicant's mother-in-law (SOR 2.c.) was born in Nigeria and still lives there. She is 70 years old, and Applicant testified she is employed as a farmer,² though she is farming less due to her age. (Tr. 57) She came to the U.S. in 1999, but returned to Nigeria. Her biological children provide for her, and she has never been dependent on Applicant. He speaks to her about three times a year, and last saw her in December 2004.

Applicant's siblings-in-law are citizens and residents of Nigeria. Applicant's sister-in-law is a trader. Applicant speaks to her twice a year, and last saw her in December 2004. The sister-in-law's daughter, a computer operator and a resident citizen of Nigeria, speaks to Applicant three times a year. She and his other in-laws are not aware he is applying for a security clearance. Applicant's two brother-in-laws, one a carpenter and one a bricklayer, speak about three times a year with Applicant. Applicant is sponsoring the carpenter (35 years old) for immigration. (AE C) He last saw the bricklayer and the carpenter in December 2004.

Applicant has a step brother, but does not know much about him. He estimated the sibling was 20 years old and some kind of mechanic. (Tr. 88) Applicant's step sister is a petty trader, who trades out of a booth. Applicant does not know anything about his other step sister. (Tr. 90)

² In GE 2, Applicant indicated she was a trader before retiring.

Though he has no contacts with his aunts, uncles, cousins, nephews, and nieces, Applicant has a friend³ he equates to a brother. Applicant has known his friend since childhood and attended his wedding in December 2004. Applicant talks to the friend about five times or more a year. (Tr. 96) The friend is about 37 years old, and employed as an agriculture adviser to the local government.

Applicant acknowledged he opened a bank account (SOR 2.e.) in Nigeria in 2002 that he believes may be closed due to inactivity. He used the bank account to exchange dollars for the local currency. He tried to get a friend to close out the account while in the country, but the bank officials want Applicant to appear in person. Applicant wrote the bank to have the account closed. (AE A)

Applicant admitted in allegation 2.f. of the SOR that he helped build a house in Nigeria by contributing about \$5,000.00. Though the house is referred to as a family house, the \$5,000.00 was actually used to finance the construction of the second house. The house gives Applicant and his wife a place to live when they visit Nigeria. Applicant has no interest in either house. Only his younger brothers have inheritance rights in the first house. The second house has no monetary value. Applicant's net worth in the U.S., including his house,⁴ investments, and insurance is about \$400,000.

Applicant traveled to Nigeria in 1996, 2000, 2002, 2003, and December 2004. The trips were to bury family members or for pleasure purposes. Applicant took an additional unlisted trip in December 2007 for his uncle's funeral. On this trip, he claims he used both his U.S. and Nigerian passport.

AE C indicates a Diversity Visa Lottery Entry Form was entered for Applicant's brother, sister, and nephew for 2005, 2006, and 2007. A Lottery Visa was also filed for Applicant's brother-in-law for 2005 and 2006.

Personal Conduct

In response to SOR 3.a., Applicant admitted he traveled to Nigeria on his Nigerian passport even though he indicated in his November 2006 SCA (GE 1) that he had a Nigerian passport issued in 1988 with an estimated expiration date of June 2004, and that he had no intention of renewing the passport. As he indicated in his response to SOR 1.b., Considering all the evidence relevant to SOR 3.a., Applicant has not provided a credible explanation as to why he would indicate in his security form that his Nigerian passport expired in June 2004, when he actually renewed the passport in June 2004. The fact he did not know he was disallowed from carrying two passports is not relevant to the false statements he entered on the security form in November 2006. I find Applicant intentionally provided false information in his November 2006 SCA by

³ Though the friend is not listed in the SOR, Applicant's level of contact with this person appears to be closer than the contact he has with his family members.

⁴ Applicant has lived in this house since December 2000.

stating (1) his Nigerian passport expired in 2004, and (2) that he had no intention of renewing his passport.

Character Evidence

Applicant served six years in the U.S. Air Force Reserves as an Airman. He received an honorable discharged on August 26, 2005. Applicant stresses that his allegiance is only to the U.S. Applicant does not believe he could be blackmailed by any of his family members. Applicant is a registered political party member. He volunteers at the public library. His wife participates in the church food bank program that provides food to the underprivileged. Applicant provided no evidence describing his employment performance.

Administrative Notice

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

U.S. Department of State, *Background Note: Nigeria*, dated February 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*, dated April 12, 2007 (Congressional Research Service Report).

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, as well as crimes committed against Western travelers to the country, particularly in the oil producing Niger Delta region. Recognizing the troubling problems in the 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. AG ¶ 2b. 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 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.

Foreign Preference (FP)

When an individual acts in a way that indicates a preference for a foreign country over the U.S., then he or she may be disposed to provide information or make decisions harmful to the U.S.

Foreign Influence (FI)

The security issues connected to foreign influence are familial ties, contacts, and/or proprietary/financial interests that could be used to generate a heightened risk of

forcing an applicant into a position of having to choose between the foreign entity and the U.S.

Personal Conduct (PC)

The focus of this guideline is questionable judgment, dishonesty or failure to follow rules.

Analysis

Foreign Preference (FP)

9. *The Concern.* “When a person demonstrates by his actions that he prefers a foreign country over the U.S., then he may be prone to provide information or make decisions that are harmful the U.S.”

When Applicant used his Nigerian passport after receiving his U.S. citizenship in May 2002, 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. Though Applicant claimed his estimation of the expiration of his Nigerian passport was unintentionally incorrect, his claim is belied by his testimony admitting he actually renewed the passport in June 2004. Though he claimed he called the Nigerian Embassy in October 2006 to report he had lost his Nigerian passport, the lack of documentation makes his claim unpersuasive.

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. The purported contact with the Nigerian Embassy is not substantiated.

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. Applicant has not taken the appropriate action under FP MC 11.e. to invalidate his lost Nigerian passport. I find against Applicant under the FP guideline.

Foreign Influence

6. *The Concern.* “Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a risk of terrorism.”

The mere possession of family ties in foreign country is not automatically disqualifying under the foreign influence guideline. 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. Considering the record as a whole, the government has established its case under the FI guideline. 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. Applicant’s family ties to his stepmother, his siblings and half-siblings, his mother-in-law, his siblings-in-law, and his lifelong friend, who are resident citizens of Nigeria, require him to present evidence in mitigation to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him.

I have concluded that FI DC 7.e. (*a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to a heightened risk of foreign influence or exploitation*) does not apply. Given the Applicant’s net worth of his assets in the U.S. of approximately \$400,00.00, including his home, the \$5,000.00 Applicant contributed to build a place to stay in Nigeria is not a “substantial” financial interest that could expose Applicant to a heightened risk of foreign influence.

Three of the six mitigating conditions (MC) under the FI guideline may apply to the facts and circumstances of this case:

FC 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*);

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*).

Almost all of Applicant's family members are farmers or traders. Only one half-sister works as a secretary for a local government entity. Though employed by a local government within the country of Nigeria, there is no evidence she is an agent of the Nigerian government. There is no indication that any of his relatives are agents of the Nigerian government. However, Applicant's six trips to Nigeria since 1996, with two trips to attend weddings, demonstrates that he is close to at least some of his family members. Given the persistent law and order problems in various parts of the country, there is a heightened risk, even discounting his ties to his lifelong friend, that pressure or coercion could be applied to and through Applicant's family members to Applicant, thereby putting him in a position of having to choose between the interests of the foreign family member and the interests of the U.S. FI MC 8.a. is inapplicable.

Applicant has indicated that his sense of loyalty to his family members in Nigeria is so minimal, that he can be expected to resolve any conflict in favor of the U.S. The DOHA Appeal Board has held that a person's statements of how he would act or react to a potential future event cannot be given much weight. See, ISCR Case No. 02-26826 (November 12, 2003). The lack of detailed evidence concerning most of Applicant's family members who are resident citizens of Nigeria raises lingering questions about the strength of Applicant's resolve to resist efforts at foreign influence. Notwithstanding his six-year service in the Air Force as an Airman, Applicant's mitigating evidence is insufficient to conclude that he can be expected to resolve any conflict in favor of the U.S.

Applicant's contacts with his family members, when viewed in isolation, are relatively infrequent. To contact several of his family members, he sends a message through another family member. The DOHA Appeal Board has indicated it is important to consider the totality of an applicant's family contacts in a foreign country, not just each family contact considered in isolation. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003) FI MC 8.c. does not apply as Applicant's contacts with his family members, when viewed in their totality, are not casual nor infrequent. The FI guideline is found against Applicant.

Personal Conduct (PC)

15. *The Concern.* "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process."

In November 2006, Applicant was provided 30 days to fill out his SCA (GE 1). Instead of stating on page 33 of the SCA that he renewed his Nigerian passport in June 2004 and used the passport in December 2004, he provided false information that his passport had instead expired in June 2004, and that he had no intention of renewing the passport. Applicant's intentional falsification of material information concerning his Nigerian passport falls within the scope of PC DC 16.a. (*deliberate omission or falsification of relevant facts from any personnel security questionnaire used to determine security clearance eligibility or trustworthiness*).

Once a case is made under the disqualifying conditions of the PC guideline, the burden shifts to Applicant to prove under the mitigating conditions that he warrants a security clearance. PC MC 17.a. (*the individual made prompt, good-faith efforts to correct the omission, concealment or falsification before being confronted with the facts*) does not apply as Applicant continues to deny he falsified his SCA in November 2006. PC MC 17.b. is not relevant based on Applicant's age and six-year employment in the U.S. Air Force Reserves. PC MC 17.c. (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) does not apply because less than two years have passed, and Applicant continues to deny he falsified the security form. PC MC 17.d. (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur*) is inapplicable for the same reasons. Applicant persists in claiming an oversight when the surrounding circumstances show an intentional falsification. Applicant has not presented sufficient, mitigating evidence to negate his intentional falsification of the SCA in November 2006.

Whole Person Concept (WPC)

My finding against Applicant under the FP, FI, and PC 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. Though Applicant has made statements about renunciation of his Nigerian passport, he has not taken the action necessary under the FP guideline. Applicant has provided insufficient evidence under the FI guideline to lessen the security concerns related to his foreign family connections. Finally, Applicant's ongoing refusal to admit he falsified a critical document used by the government to determine security suitability precludes a finding in his favor under the PC guideline.

