



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 07-13497
)	
Applicant for Security Clearance)	

Appearances

For Government:
Emilio Jaksetic, Esquire, Department Counsel
For Applicant: Brent C. Harvey, Esquire

June 30, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 29 January 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines C and E.¹ Applicant answered the SOR 20 March 2008, and requested a hearing. DOHA assigned the case to me 14 May 2008, and I convened a hearing 5 June 2008. DOHA received the transcript (Tr.) 16 June 2008.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant admitted the SOR allegations. He is a 53-year-old accountant employed by a defense contractor since October 1997. He seeks to retain the security clearance he has held since about April 2006. Although he does not know what, if any, clearance were granted, he has been the subject of U.S. government background investigations in November 1998, April 2005, and April 2006 for his contract work with other government agencies.

Applicant was born in Nigeria in August 1954. He was raised there and educated there through high school. He became an accountant by on-the-job training. He immigrated to the U.S. in August 1980 to go to college, having obtained an education visa. He eventually obtained both undergraduate and post-graduate degrees. Along the way, he was able to covert his education visa into a work visa. He became a naturalized U.S. citizen in February 1995. At that time, he surrendered the Nigerian passport that U.S. immigration law required him to maintain. Later that year, he obtained his first U.S. passport. He renewed his U.S. passport in September 2005.

In February 1990, Applicant married a Nigerian national he met in the U.S. She became a naturalized U.S. citizen in July 2000. Applicant and his wife have four children, all native-born U.S. citizens.

Applicant and his wife traveled to Nigeria in 2001 with his children to show them where he grew up. They traveled on their U.S. passports. In 2003, Applicant had disciplinary problems with his teenage daughter and thought she might be less blase about her privileged live in the U.S. if she experienced school in Nigeria. He enrolled her in a private school and traveled to Nigeria for a week in 2003 to take her to school. Again, he traveled on his U.S. passport. When—lesson learned—she implored him to take her out of school, he returned to Nigeria on his U.S. passport in 2004.

The difficulty and expense of obtaining the necessary visa from the Nigerian Embassy bothered Applicant on two counts. The difficulty made travel visas inconvenient. The expense Applicant viewed as enriching a corrupt Nigerian government. Applicant believed it would be both more convenient and less enriching to the Nigerian government if he obtained a Nigerian passport, and—being unaware of any reason not to—applied for one. He received his Nigerian passport in August 2004. He used it to enter and exit Nigeria in December 2005 and December 2007, although he used his U.S. passport to re-enter the U.S. He made these trips to visit his brothers.

Applicant fully disclosed his foreign connections on his August 2006 clearance application (G.E. 1) and fully discussed them during a July 2007 subject interview (G.E. 2). During his interview, he stated his willingness to surrender his Nigerian passport and renounce his Nigerian citizenship. When he became aware of the security concerns raised by his possession and use of a Nigerian passport, he surrendered his passport and stated his intent to renounce his Nigerian citizenship to the Nigerian Embassy on 7

March 2008 (Answer). He received confirmation of the surrender and renunciation from the Nigerian Embassy in May 2008 (A.E. A).

Applicant's two brothers are resident citizens of Nigeria. Neither is connected to the Nigerian government. One brother is a farmer; the other is a town planner at a governmental level equivalent to a state government in the U.S. He has frequent enough contact with his brothers, mostly the town planner. The farmer doesn't have a telephone.

Aside from applying for and using a Nigerian passport, Applicant has not exercised his dual citizenship with Nigeria since becoming a U.S. citizen. He has no financial or other interests in Nigeria. He has no contacts with Nigeria other than his two brothers. All his financial interests are in the U.S. He owns his own accounting firm. He has voted in every election in the U.S. since becoming a U.S. citizen.

Applicant's character witness was both a schoolmate of Applicant's growing up in Nigeria and an active-duty military officer with 23-years combined enlisted and commissioned service. A naturalized U.S. citizen himself, he has held a clearance for over ten years. He described the depth of Applicant's commitment to the U.S. and voiced no concerns with Applicant having access to classified information. He also confirmed that many Nigerians retain their U.S. passports after becoming U.S. citizens because of the visa hassles with the Nigerian Embassy. Applicant's character references (A.E. B), both of whom know Applicant professionally, consider him extremely honest and trustworthy and eligible to retain his clearance.

Nigeria—a part of the British Empire first as a sphere of British influence in 1885, then as a colony and protectorate in 1914—was granted independence from the United Kingdom in October 1960. Since independence, the government has experienced multiple periods of political unrest, including military takeovers of the government. However, the military has generally ceded power back to civilian government, most recently in May 1999. Although Nigeria has a poor human rights record, it has been a staunch supporter of the U.S. global war on terrorism. Furthermore, since independence Nigerian foreign policy has been characterized by a focus on Africa and adherence to several fundamental principles: African unity and independence; peaceful settlement of disputes; nonalignment and nonintentional interference in the internal affairs of other nations; and regional economic cooperation and development. Nigeria is the largest U.S. trading partner in sub-Saharan Africa, and the U.S. is second only to the United Kingdom in trade with Nigeria. The U.S. is the largest foreign investor in Nigeria. Nigeria is not a known collector of U.S. intelligence or sensitive economic information. Nigeria is not known to target U.S. citizens to obtain protected information. The U.S. Department of State characterizes the foreign relations between the U.S. and Nigeria as excellent.

Nevertheless, violent crime, committed by ordinary criminals as well as by persons in police and military uniforms, can occur throughout the country. Kidnaping 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 January 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. The travel warning also notes that al Qaida leadership has expressed an interest in overthrowing the Nigeria government.

Although the civilian government since 1999 was characterized by political unrest and corruption, an opposition candidate was elected in May 2007 and power transferred peacefully. The new government has been working on necessary electoral and other reforms.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline C (Foreign Preference) and Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.²

Analysis

The government established a case for disqualification under Guideline C by showing that Applicant obtained and used a Nigerian passport after becoming a

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

naturalized U.S. citizen.³ However Applicant mitigated the Guideline C security concerns. Record evidence demonstrates that his exercise of Nigerian citizenship was innocuous, sensible, and unwitting. That alone would not excuse the exercise of Nigerian citizenship. His dual citizenship was based on his actively renewing or affirming his Nigerian citizenship.⁴ All exercise of dual citizenship occurred while he was an adult.⁵ Applicant's use of his Nigerian passport was not sanctioned by the U.S.⁶ However, Applicant has met the two most salient mitigating conditions. He has expressed—and acted upon—a willingness to renounce his foreign citizenship.⁷ He stated—and acted upon—willingness to invalidate his passport.⁸ Applicant has resided in the U.S. nearly 30 years. His interests and his roots are well established here. I resolve Guideline C for Applicant.

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.⁹ Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk or foreign exploitation, inducement, manipulation, pressure, or coercion.¹⁰

³Revised Adjudicative Guidelines, ¶ 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 included but is not limited to: (1) possession of a current foreign passport; (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

⁴Revised Adjudicative Guidelines, ¶ 11(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

⁵¶ 11(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;

⁶¶ 11(d) use of a foreign passport is approved by the cognizant security authority;

⁷¶ 11(b) the individual has expressed a willingness to renounce dual citizenship;

⁸¶ 11(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated;

⁹Revised Adjudicative Guidelines, ¶ 6.

¹⁰Revised Adjudicative Guidelines, ¶ 7.(a).

In this case, the government failed to establish a case for disqualification under Guideline B. Considering first the foreign country involved, Nigeria and the U.S. enjoy excellent foreign relations. However, while Nigeria focuses its foreign policy largely in the region, it has actively cooperated with the U.S. in ending global terrorism. Nigeria is not known to target protected U.S. information, nor is it known to target U.S. citizens to obtain protected information. Further, in this case it is not clear what further claim Nigeria might have on Applicant. He has both renounced his Nigerian citizenship and surrendered his Nigerian passport to the Nigerian government. The risk that Nigeria might seek protected information from Applicant is low, if not non-existent.

Considering Applicant's situation in relation to the Nigerian government, the government produced no evidence that there was any risk, much less a heightened risk, of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's limited family contacts in Nigeria. Applicant's travel to Nigeria has no independent security significance given that Nigeria is not known to be targeting U.S. citizens for information. The security significance of travel under most circumstances is demonstrating an applicant's affection for family members, which Applicant's December 2005 and December 2007 trips to visit his brothers certainly corroborate, and which Applicant does not dispute. But neither brother is connected to the Nigerian government nor otherwise situated to be exploited for information gathering. There is nothing in the circumstances of their being in Nigeria, or in Applicant's contacts with them, to heighten the risk that he could be impelled to provide protected information to Nigeria. Applicant's trip to Nigeria to show his family the country where he grew up (2001) and to give his complacent teenage daughter a life lesson (2003 and 2004) lack even that attenuated security concern. I resolve Guideline B for Applicant.

Formal Findings

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph a: For Applicant
Subparagraph b: For Applicant
Subparagraph c: For Applicant
Subparagraph d: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph a: For Applicant
Subparagraph b: For Applicant
Subparagraph c: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge