



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



In the matter of:)	
)	
)	ISCR Case No. 07-14708
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: Pro Se

July 11, 2008

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information must be granted.

Applicant submitted her Security Clearance Application (SF 86), on August 31, 2006. On March 28, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines B and C for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on April 3, 2008. She answered the SOR in writing on April 3, 2008, and requested a hearing before an administrative

judge. DOHA received the request on April 8, 2008. Department Counsel was prepared to proceed on April 22, 2008. DOHA initially assigned this case to another administrative judge on April 29, 2008. For case load management, this case was reassigned to me on May 5, 2008. DOHA issued a notice of hearing on May 9, 2008, which Applicant received on May 14, 2008. I convened the hearing as scheduled on June 5, 2008. The government offered two exhibits (GE) 1 and 2, which were received and admitted into evidence without objection. Applicant and one witness testified on her behalf. She did not submit any exhibits at the hearing. However, I held the record open until June 16, 2008, for the submission of additional matters. Applicant timely submitted the evidence, which I marked and admitted as Applicant Exhibit (AE) A, without objection. DOHA received the transcript of the hearing (Tr.) on June 16, 2008, and the record closed on the same day.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Nigeria. (Tr. at 10-12.) The request and the attached documents were not admitted into evidence, but were included in the record as Administrative Exhibits I through V. Administrative notice will be limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out in the Findings of Fact below.

Findings of Fact

In her Answer to the SOR, dated March 28, 2008, Applicant admitted the factual allegations in ¶¶ 1.a-1.e, and 2.a-2.d of the SOR, with explanation. She also provided additional information to support her request for eligibility for a security clearance.

Applicant, who is 25 years old, works as an electrical engineer for a Department of Defense contractor. She began her employment in July 2006 and completed her request for a security clearance less than two months later.¹

Applicant was born in the United States (U.S.), while her parents were students at a U.S. university. When she was 18 months old, her parents returned to Nigeria, the place of their birth. Applicant indicated on her SF-86 she is also a citizen of Nigeria. She remained in Nigeria until 1999 when she returned to the U.S. with her older sister, who was attending college. She completed her high school education in 2000. She graduated from a major U.S. university with a Bachelor of Science degree in electrical engineering in 2006. She has lived in the U.S. since 1999 and intends to continue living in the U.S. She is single with no children.²

¹GE 1 (Security clearance application, dated August 30, 2006) at 1, 8-9.

²GE 1, *supra* note 1, at 1, 6, 15-20; Tr. 14, 34, 36.

Applicant's mother and father are citizens and residents of Nigeria. They live in southern Nigeria and are not politically active. Her father works as an electrical engineer with an electric company in Nigeria. Applicant does not know if his employer is a private company or a government owned company. Her father owns several rental properties, and her mother manages the business for him because she is an accountant. Her mother worked as a principal for a number of years in her grandfather's school. In 2005, Applicant's mother decided to open a private high school, which she now operates and manages. Like most schools in Nigeria, the school is funded through tuition and not by the government. The school complies with general educational guidelines and curricula developed by the Nigerian government. However, the government is not involved in the dat-to-day operations of the school.³

Applicant and her older sister, who is also a U.S. citizen by birth, came to the U.S. in 1999 to attend school. Her older sister continues to reside in the U.S. and they live together. Applicant's sister attends college part-time while working towards her second bachelor's degree and works in the medical profession. Although she also claims dual citizenship, her older sister intends to remain in the U.S. Their father has encouraged both to remain in the U.S.⁴

Applicant's brother, who is 23-years-old, is a citizen of and resides in Nigeria. He recently graduated from college with a degree in accounting. He plans to return to school to obtain a masters degree. Her two younger sisters are ages 22 and 17 and are citizens of and reside in Nigeria. Her 22-year-old sister is a college student, majoring in accounting, and her 17-year-old sister just graduated from high school. None of her siblings are married or have children.⁵

Applicant generally communicates with her family in Nigeria by telephone. She occasionally sends her dad information on cars by e-mail, but does not otherwise use e-mail to communicate with her family. She talks with her mother one to two times a month and her father whenever he is at home. She talks with her brother and 22-year-old sister two or three times a year. She talks with her youngest sister about once a month. To her knowledge, her siblings in Nigeria do not plan to emigrate to the U.S. Her parents have not visited the U.S. since their return to Nigeria more than 20 years ago and her siblings in Nigeria have never visited the U.S.⁶

Applicant obtained her current U.S. passport in 2001, and used this passport and a Nigerian visa when she traveled to Nigeria for the Christmas holiday in December 2001. During this trip, Applicant learned that her mother had applied for a Nigerian passport on Applicant's behalf to ease her entry into Nigeria in the future. Applicant

³Tr. 15-18, 45-49.

⁴GE 1, *supra* note 1, at 18; Tr.19, 35-37.

⁵GE 1, *supra* note 1, at 18-19; Tr.18, 37-42.

⁶Tr. 38-40, 42-44, 48-49.

received the Nigerian passport before she left Nigeria sometime in January 2002. Applicant used her U.S. passport to exit and enter the U.S. and her Nigerian passport to enter and exit Nigeria when she traveled for the Christmas holiday in December 2002 and in the summer of 2006.⁷

Applicant's Nigerian passport expired in January 2007. When she traveled to Nigeria for the 2007 Christmas holiday, Applicant obtained a single-entry Nigerian visa which she used along with her U.S. passport for exit from the U.S. and entry into Nigeria and return to the U.S. While in Nigeria, her family took a vacation to a neighboring country, a trip she did not learn about until she arrived in Nigeria. Nigeria allowed her to re-enter Nigeria on her expired Nigerian passport, but not on her single entry visa. At the hearing, Applicant expressed a willingness to give up her Nigerian passport, and has done so. She has expressed a willingness to give up her Nigerian citizenship. The record contains no evidence that by giving up her passport, she renounced her Nigerian citizenship. She does not know how to renounce her Nigerian citizenship, nor does she know when she will travel next to Nigeria.⁸

Applicant visits her maternal grandfather when she is in Nigeria, but not her paternal grandmother, who lives some distance from the family. She stays with her parents when in Nigeria and her siblings are at home during this time. She has one uncle and cousins who are citizens and residents of the U. S. She spends all her time with her family when in Nigeria, but not with anyone else as she has no friends in Nigeria. The Nigerian government has not approached her during her visits, nor has any member of her family had any problems with the Nigerian government. She does not discuss her job with her family.⁹

Applicant has never voted in a Nigerian election. She does not own property or hold any bank accounts in Nigeria. She does not receive any money from the Nigerian government for any reason, including education.¹⁰

Applicant's former first-line supervisor and current section head testified on her behalf. He described her as a hard worker, intelligent, highly motivated, reliable, and a person of integrity. She is an asset to his organization and a person in whom he has confidence and great respect personally. While holding her interim clearance, she did not violate security rules.¹¹

⁷GE 2 (Interrogatories and answers) at I-12, I-16; Tr. 21-22, 26-29, 33, 57-61.

⁸GE 2, *supra* note 7, at I-19, I-41; App Ex A (Documents on passport destruction); Tr. 27-30, 61, 63-65.

⁹Tr. 20, 52-59, 68, 70.

¹⁰Tr. 30.

¹¹Tr. 72-74.

I take administrative notice of the following facts. Nigeria became an independent country in 1960. Because of many changes in its governing structure following gaining independence, Nigeria suffers from political instability, economic crisis, ethnic and religious conflict, extreme poverty, lack of law and order, and judicial corruption. IN may 1999, Nigeria returned to civilian rule and is now an emerging democracy with strong ties to the U.S. The current Nigerian government is focusing on economic reform and is successfully building a market-based economy, including privatizing its telecommunications and petrochemical industries. It is focused on rebuilding its infrastructure, not espionage against the U.S. Nigeria is a key strategic and trading partner of the U.S. in Africa. While its human rights record still needs serious improvement, police actions appear to target political activists and criminals. Crime remains a serious problem in certain areas. Muslims live in northern Nigeria, where religious conflict is prevalent, and Christians live in southern Nigeria. Applicant's family lives in southern Nigeria where there is less internal conflict. If they travel, family members travel to the homes of other family members in the south.¹² The Nigerian government does not support or sponsor terrorism or terrorist organizations, but some acts of terrorism have occurred within Nigeria.

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.

¹²Administrative Exhibit I (U.S. Department of State, Bureau of African Affairs, Background Note: Nigeria, dated April 2008); Administrative Exhibit II (CRS Report for Congress Nigeria: Current Issues, dated January 2008); Administrative Exhibit V (U.S. Department of State, Country Reports on Human Rights Practices in Nigeria 2007, dated March 2008).

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:

(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;

(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;

(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; and

(l) conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Six of Applicant's immediate family members are citizens of and reside in Nigeria. She maintains a normal personal relationship with these family members. These relationships are not *per se* a reason to deny Applicant a security clearance. The government must establish that these family relationships create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion or would create a potential conflict of interest between her obligations to protect sensitive information and her desire to help her family members.

In determining if a heightened risk exists, I must look at Applicant's relationship and contacts with family members as well as the activities of the government of Nigeria. See ISCR Case No. 07-05809 (App. Bd. May 27, 2008). Applicant regularly talks with her parents. She talks with two of her siblings two or three times a year and her youngest sister on a monthly basis. She visited her family in Nigeria four times between 2001 and 2007. During these visits, she stayed at her parents home, as did her siblings. She visited her nearby grandfather, but had no other contacts with extended family or others, including government officials during her visit.

Although Nigeria is regarded as friendly to the U.S., the distinction between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members would be at a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion or would create a potential conflict of interest between her obligations to protect sensitive information and her desire to help her family members. The risk is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S. Nigeria is an emerging democracy. Nigeria has serious economic, human rights issues, and criminal problems. The government of Nigeria, however, does not support terrorism and the active collection of intelligence or proprietary information.

Applicant's family members live in southern Nigeria which is predominately Christian. Her family members do not receive and are not dependent upon government funds. Applicant is unaware of any serious problems in the south as a result of politics and government policy. While Nigeria has significant Human Rights problems, there is little risk that the Nigerian government could apply pressure or subject Applicant's family members to duress because her family members are neither political activists nor criminals. I do not find a heightened concern exists as to Applicant's family members in Nigeria.¹³

Should a heightened risk exist, I must consider if Applicant has mitigated the government's concerns. Under AG ¶ 8 (a), mitigation is established if

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.

and under AG ¶ 8(b), if

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. interests.

Applicant maintains a normal relationship with her family members. Applicant clearly has close ties with her family in Nigeria. However, her family members are not involved in politics and do not rely on the Nigerian government for any financial support. Rather, her mother runs a private school and her father works for the electric company. Three of her siblings are students in Nigeria and her fourth sibling lives with her in the U.S. Given that the U.S. and Nigeria have a strong relationship and the lack of counterintelligence activity by Nigeria, there is little likelihood that the Nigerian government would pressure or coerce her family members for information. By living in southern Nigeria, her family members are less vulnerable to government pressure. Applicant has established mitigation under AG ¶ 8(a). With her significant connections to the U.S., she has also established mitigation under AG ¶ 8(b). Given her regular contacts with family members in Nigeria, AG ¶ 8(c) is not applicable.

Guideline C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises, "[W]hen an individual acts in such a way as to indicate a preference for a foreign country over

¹³ISCR Case No. 07-02485 (App. Bd. May 9, 2008); ISCR Case No. 07-02715 (App. Bd. May 21, 2008).

the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.”

Under AG ¶ 10, the following conditions could raise a security concern and may be disqualifying in this case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial. or business interests in another country;
- (6) seeking or holding political office in a foreign country; and,
- (7) voting in a foreign election.¹⁴

Applicant is a citizen of the U.S. by birth. Her parents, however, are not U.S. citizens, but citizens of Nigeria. They returned to Nigeria when they completed college education and Applicant was 18 months old. Applicant became a citizen of Nigeria because of her parents. She lived in Nigeria until she was 16 years old, when she returned to the U.S. In 2002, her mother obtained a Nigerian passport for her, which she used to enter and exist Nigeria through January 2008. She has never voted in Nigeria, held political office, served in the military or owned property in Nigeria. She receives no financial assistance of any type, including educational funds, from the Nigerian government. Disqualifying condition AG ¶¶ 10(a) and 10(a)(1) apply. The remaining disqualifying conditions in ¶ 10(a) do not apply.

¹⁴The remaining disqualifying conditions are not applicable to this case. See AG ¶¶ 10(b) - 10 (e).

Under AG ¶ 11, Applicant could mitigate the government's security concerns through any of the following:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor; and
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

When she traveled to Nigeria in December 2007, she used her U.S. passport and a Nigerian visa to travel between the U.S. and Nigeria. The only way Nigeria allowed her to enter from a family vacation to nearby country was on her expired Nigerian passport. Since this trip, Applicant submitted her expired Nigerian passport to her security officer, who destroyed it. She has expressed a willingness to renounce her Nigerian citizenship which she acquired because of her parents. Outside of holding a Nigerian passport for five years, Applicant has not exercised any other rights of Nigerian citizenship. She plans to remain in the U.S. She has mitigated the government's security concerns under §§ 11(b) and (e).

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) the 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a U.S. citizen by birth, who was raised in Nigeria by her Nigerian parents. While still a high school student, she returned to the U.S. where she completed both high school and college. She has lived in the U.S. for nine years and has no intent to return to Nigeria to live. She continues to maintain regular contact with her parents and travels there mainly for the Christmas holiday season. Her contacts with her family and her travels to Nigeria have not and do not place her at a heightened risk because the Nigerian government is not a collector of intelligence nor a sponsor of terrorism. Nigeria and the U.S. are not economic or military rivals. Although crime is a problem in Nigeria, as in the U.S., Applicant and her family are not at any greater risk because of the crime. The Nigerian government has problems with human rights violations, but there is no evidence such violations occur because of a person's relationship to the U.S. Because of all these reasons and her family lives in southern Nigeria and are not politically active, they are not at risk for problems from the Nigerian government.

As a Nigerian citizen, Applicant held a Nigerian passport, which expired 18 months ago and is destroyed. She has not exercised any other rights of her Nigerian citizenship and is willing to renounce her citizenship. She complies with U.S. laws and is a model citizen. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising because of her foreign influence and foreign preference.

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
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant

Conclusion

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

MARY E. HENRY
Administrative Judge