



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



In the matter of:)
)
) ISCR Case No. 07-15176
)
)
Applicant for Security Clearance)

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: *Pro Se*

August 26, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant is a village chief in Nigeria. He travels to Nigeria twice a year to fulfill his village duties and does not wish to renounce his Nigerian citizenship for it might interfere with his travel to Nigeria. Applicant’s wife, mother, and the majority of his siblings and step-siblings are citizens and residents of Nigeria. Additionally, he had 26 past due and delinquent accounts totaling more than \$35,000. Applicant’s personal conduct is not of security concern. However, Applicant has failed to mitigate the foreign influence, foreign preference, and financial consideration security concerns. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued to

¹ 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)

Applicant a Statement of Reasons (SOR) on January 24, 2008, detailing security concerns under Guideline C, foreign influence, based on his Nigerian duties as a village chief, Guideline B, foreign preference due to his wife, mother, siblings and fiancé who are citizens and residents of Nigeria, and Guideline F, financial considerations, based on a history of financial problems as evidenced by delinquent debts.

On February 8, 2008, Applicant answered the SOR, and requested a hearing. On May 20, 2008, the SOR was amended to strike some of the duplicate debts, to add allegations under SOR ¶¶ 1.c and 2.d, and to allege security concerns under Guideline E, for personal conduct, based on failure to disclose owning foreign land and failing to list a 1994 arrest and a 2005 conviction. On June 8, 2008, Applicant answered the SOR. On June 10, 2008, I was assigned the case. On July 10, 2008, DOHA issued a notice of hearing scheduling the hearing held on July 23, 2008. The government offered Exhibits (Ex.) 1 through 8, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through C, which were admitted into evidence. On August 6, 2008, the transcript (Tr.) was received.

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. The request and the attached documents were not admitted into evidence but were included in the record as Items I–V. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, Applicant denies he owns land in Nigeria in response to the allegations in ¶¶ 1.c, 2.d, and 4.a. He denied 13 of the debts and admitted the remainder indicating the majority of the debts had been incurred prior to his divorce. The admissions are incorporated herein as findings of fact. After a thorough review of the record, case file, pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 53-year-old quality control manager who has worked for a defense contractor since August 2001, and is seeking to obtain a security clearance.

Applicant was born in Nigeria. In October 1976, unable to find work in Nigeria Applicant moved to the U.S. He intended to return to Nigeria when he finished schooling. Due to hard times in Nigeria, including a military coup, his parents encouraged him to stay in the U.S. In December 1989, he became a U.S. citizen. In September 2001, he obtained his bachelor's degree in construction management from a state university in California. (Ex. 8) He has spent 32 years in the U.S. (Tr. 41)

approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant's father had two wives and is now deceased as is Applicant's step-mother. His father was the Minister of Information. (Ex. 8) His mother, a citizen and resident of Nigeria, was a business woman with whom he has weekly telephone contact. Applicant sends his mother \$1,000 per year for her living expenses. (Tr. 44) His siblings also contribute to his mother's support. His wife is a citizen and resident of Nigeria with whom he has telephone communications three times a day. They married in December 2006. He had anticipated she would complete her immigration paperwork and move to the U.S by the end of 2007. His wife remains in Nigeria.

Prior his death, Applicant's father was the chief of his village of 400 to 500 people. (Tr. 94, Ex. 8) When his father died in 2005, by tradition, Applicant, being the first son, became chief of the village. (Tr. 35) Since becoming chief, Applicant has returned to Nigeria twice a year to fulfill his duties as chief. He spends two to three weeks during each trip in Nigeria. (Tr. 93) Applicant intends to continue doing so for the rest of his life. Duties include: leading the village, settling disputes with other villages, settling disputes within his village, and handling punishments for those who do illegal things in the village. He reviews disputes dealing with theft and adultery. (Tr. 37, Ex. 8) He is required to be present in June and December each year for annual festivals. Each trip to Nigeria costs between \$1,000 and \$1,600. (Tr. 91)

Applicant's father owned 100 acres of land on which his father had his house. The land is family land not owed exclusively by Applicant. (Tr. 37) In 2005, Applicant started building a house for himself on this land. The house is worth approximately \$10,000. (Tr. 42) He does not intend to move permanently to Nigeria until much later in his life. Applicant relinquished his Nigerian passport when he obtained his U.S. passport. Applicant states he is a loyal U.S. citizen, but is concerned about renouncing his Nigerian citizenship because he does not know the impact renouncing might have on his travel to Nigeria. He will not renounce his Nigerian citizenship if it would affect his ability to travel to Nigeria.

Applicant lives with a sister in the U.S. who is an administrator and dual U.S. and Nigerian citizen. Applicant has a step-brother who is a computer analyst living in the U.S. with whom he has had no contact in 10 years. He has another step-brother who is an electrical engineer in California who he contacts every two years. The remainder of his seven siblings and eight step-siblings are citizens and residents of Nigeria.

One of his sisters is a retired nursing administrator (Tr. 47); another is a business woman with whom he has contact three times a month; one sister who is a teacher with whom he has weekly contact (Tr. 51); he does not know his one sister's occupation; another sister is a retired police commissioner. Applicant has a brother who is a teacher in Nigeria with whom Applicant has monthly telephone contact. (Tr. 50, Ex. 8) Applicant does not know the occupation of one of his brothers. Another brother is a local government chairman of his village. This brother is an elected government official, a vice local building chairman working for the governor. (Tr. 53)

Applicant step-sister is a retired police commissioner in Nigeria. (Tr. 52, 56, Ex. 8) His contact with her is every three years. He has two step-sisters who are business

women/traders, one of which he has not spoken with in seven years and the other he sees twice a year; one step-sister is an attorney with whom he has had no contact in 10 years; a step-sister is a teacher; and one step-sister is deceased.

Applicant was married from June 1995 to November 2005. Applicant and his ex-wife share legal custody of their four children all born in the U.S. His ex-wife has physical custody of the children. Applicant was ordered to pay \$1,700 per month in child support. He was also required to maintain insurance for the children until his ex-wife completes her education to be a nurse. At the time of their divorce, Applicant's wife was making \$50,000 a year and his yearly salary was \$75,000. (Tr. 96)

In October 2004, Applicant was charged with second degree assault and assault with a deadly weapon with the intent to injure. His wife alleged Applicant pursued her with a knife. Applicant asserts it was a frame-up. (Tr. 80) In May 2005, he was convicted of the charge. Applicant was court ordered to see a psychologist, which he did twice a week for two months and then once a week for four months. (Ex. 8) He was sentenced to three years and two years in prison, respectively. The judgment was stayed. (Ex. A) The prison sentences were suspended and he was placed on probation until May 2007. (Ex. 3) Following the October 2004 incident, Applicant's then wife filed for divorce.

In 1994, Applicant had been at a bar drinking with friends. Applicant, then age 39, stopped to give a woman standing on a street corner a ride and was arrested for soliciting a prostitute. He thought the woman was a hitchhiker. (Tr. 82) He was taken to the police station and released. He does not remember being charged, paying bond, hiring an attorney, or appearing in court. (Tr. 82) In 1994, he was convicted of disorderly conduct (prostitution) and sentenced to 12 months probation. (Ex. 3)

The SOR alleges 22 delinquent debts in question totaling approximately \$27,000. Applicant admits debts totaling approximately \$14,500 and denies the remainder. Applicant has not contacted some of his creditors about his delinquent debt because he would not be able to pay them. (Tr. 69)

In 2003, a civil suit was filed against Applicant by his landlord who claimed Applicant owed more than \$5,000 in unpaid rent. Applicant thought his then wife was making the payments. In April 2004, the judgment was satisfied. In July 2008, an order of satisfaction was entered as to the credit card debt listed in SOR ¶ 3.m (\$1,115). (Tr. 28, Ex. B) The creditor of the debt listed in SOR ¶ 3.y (\$1,212) has offered to settle the matter for \$600. There is no documentation Applicant accepted the offer or made payment in compliance with the offer.

In June 2006, Applicant completed a sworn interview (Ex. 8) Applicant asserts he disputes ten debts, seven of which are listed in the SOR (SOR ¶¶ 3.b, 3.c, 3.f, 3.i, 3.k, 3.o and 3.q). Applicant stated he should have to pay only the debts he was responsible for and would establish repayment plans for those debts. He anticipated those debts would be paid by June 2007. (Ex. 8) He did not provide documentation showing the basis of the disputes.

As of June 2006, Applicant gross monthly salary was \$6,200. Applicant makes \$776 monthly payments on his car, which he purchased three years ago. He owes \$27,000 on his car. Applicant monthly remainder after paying other expenses and deductions was \$1,417. (Ex. 8) Applicant estimates his discretionary income at \$1,200 per month. (Tr. 78) Applicant did not provide a budget. (Tr. 79) He has not received financial counseling. (Tr. 80)

Applicant acknowledged the telephone debt in SOR ¶ 3.j (\$866). His wife had incurred the telephone bill prior their divorce. He indicated he would contact the creditor and set up a repayment plan by June 2007. This was not done. Applicant asserts that during a three week separation his then wife ran up a \$5,279 telephone bill. (SOR ¶ 3.q) Applicant does not want to pay this bill because his ex-wife incurred the debt. (Tr. 73, Ex. 8) The divorced decree did not require his ex-wife to pay the bill. At the time of the divorce, he just wanted to get it over with and many things went unaddressed. (Tr. 73)

The state alleged Applicant was delinquent on this child support payments. Applicant denies being delinquent. Applicant has an automatic deduction of \$1,994 monthly paid directly from his wages. SOR ¶ 3.v (\$1,093) is a department store credit card debt. Applicant stopped making payment on this debt when his account was not properly credited with merchandize he had returned. Applicant disputes the amount owed on the discount department store credit card listed in SOR ¶ 3.w (\$702). (Ex. 8) He assets he charged \$124 and the remainder is interest and penalties. (Ex. 8)

Applicant purchased jewelry for \$2,451 (SOR ¶ 3.x) with \$50 monthly payments. When he made a second purchase the monthly payment rose to \$125, which he could afford and the debt became delinquent. Applicant is talking with his attorney about settling the department store debt (SOR ¶ 3.v, \$1,093). At one time, Applicant was repaying his gasoline credit card debt (SOR ¶ 3.z, \$953), but is no longer doing so. The delinquent debt remains unpaid. (Tr. 75)

In September 2006, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). In section 17, "Your Foreign Activities" he was asked if he had any foreign property. He answered "no" even though he was building a house in Nigeria. Applicant states he misunderstood the question. (Tr. 62) In reading the question, Applicant concentrated on the business connections and financial interest part of the question.

In response to section 23, "Your Police Record," Applicant listed his November 2005 domestic arrest. He did not list nor was he required to list his February 1994 arrest for soliciting a prostitute on either his September 2006 SF-86 or his December 2001, Public Trust Position Applicant, Standard Form (SF) 85P. The question of each form restricts the time frame in question to the previous seven years. The 1994 arrest was outside of the period of review.

Nigeria

Nigeria is a western Africa federal republic that has experienced periods of political instability, turmoil, and economic crisis since obtaining its independence from Britain in 1960. Military coups and long military-imposed transitions rather than civilian rule are part of Nigerian political history.² The military has ruled Nigeria for approximately 28 of its 43 years since independence.³

In May 1999, Nigeria returned to civilian rule. In the eight years since the end of military rule, Nigeria has suffered serious ethnic/religious conflicts.⁴ Areas of Nigeria are marked by serious instability and outbreaks of armed conflicts between religious, political, and ethnic factions.⁵

Nigeria is Africa's most populous country with over 250 ethnic groups with the majority of people living in extreme poverty.⁶ Nigeria is Africa's largest oil producer and its oil wealth is a continuing source of political tension and civil unrest. Ongoing ethnic and religious conflicts are often based upon resentment between the northern and southern regions of the country over perceived unfairness in the distribution of the substantial oil revenues.⁷ The Northern two-thirds of the country is Muslim and the southern third is a mix of Muslims and Christians.⁸

Lack of law and order in Nigeria poses considerable risks to travelers, including armed robbery and kidnapping.⁹ Violent crime, committed by ordinary criminals, as well as by persons in police or military uniforms can occur throughout the country. U.S. citizens are warned of the deteriorating security situation in the oil rich Niger Delta region. Kidnapping for ransom in the area remains high.

The Nigerian government's human rights record is poor, and the government continues to commit serious human rights abuses.¹⁰ Nigerian government officials at all

² U.S. Department of State, Bureau of African Affairs, *Background Note; Nigeria*, April 2008 (Background Notes) at 1. (Ex. I)

³ Congressional Research Service, CRS Report for Congress, *Nigeria: Current Issues*, January 30, 2008 (CRS Report) at CRS-2. (Ex. II)

⁴ Background Notes at 6; CRS Report at Summary. (Ex. I)

⁵ U.S. Department of State, Bureau of Consular Affairs, *Travel Warning: Nigeria*, October 30, 2007 (Travel Warning) at 1-2. (Ex. IV)

⁶ Background Notes at 1 (Ex. I); CRS Report at Summary and CRS-1. (Ex. II)

⁷ CRS Report at CRS-11-13. (Ex. II)

⁸ Background Notes at 2. (Ex. I)

⁹ Travel Warning at 1. (Ex. IV)

¹⁰ U.S. Department of State, *Country Reports on Human Rights Practices – 2007: Nigeria*, March 11, 2008 at 1. (Ex. V)

levels committed serious abuses, including politically motivated and extrajudicial killings by security forces, torture, arbitrary arrest, and judicial corruption.¹¹

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

¹¹ *Id.* (Ex. V)

applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Foreign Preference

Revised Adjudicative Guideline (AG) ¶ 9 articulates the security concerns relating to foreign preference problems:

When an individual acts in such a way as to indicate a preference for a foreign country over 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.

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying:

(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 and/or use of a 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 the foreign country;
- (7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States; for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

AG ¶ 11 provides conditions that could mitigate security concerns:

(a) dual citizenship is based solely on parents’ citizenship or birth in a foreign country;

- (b) 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;
- (d) use of a foreign passport is approved by the cognizant security authority;
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and
- (f) the vote in a foreign election was encouraged by the United States Government.

When Applicant's father died, Applicant as the eldest son, became chief of his village. He travels to Nigeria twice a year to fulfill his obligations. Applicant intends to continue doing so for the rest of his life. In 2005, Applicant started building himself a house on his father's land. He is required to be present in June and December each year for annual festivals and stays two or three weeks on each visit. He does not intend to move permanently to Nigeria until much later in his life, but is concerned about renouncing his Nigerian citizenship because he does not know the impact renouncing might have on his travel to Nigeria. He will not renounce his Nigerian citizenship if it would affect his ability to travel to Nigeria.

Accepting the role of village chief, traveling to Nigeria twice a year to fulfill those duties, and reluctance to renounce his Nigerian citizenship shows a foreign preference. As village chief, Applicant adjudicates punishments and penalties to those who violate rules. SOR ¶ 10.c None of the mitigating conditions apply.

Applicant's family owns 100 acres of land in Nigeria on which he is building a house. Applicant is not the exclusive owner of the land. I find in Applicant's favor as to SOR ¶ 1.c.

Foreign Influence

AG ¶ 6 expresses the security concerns 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) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

(c) counterintelligence information, that may be classified, indicates that the individual's access to protected information may involve unacceptable risk to national security;

(d) sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;

(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 heightened risk of foreign influence or exploitation;

(f) failure to report, when required, association with foreign national;

(g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service;

(h) indications that representatives or nations from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion; and

(i) 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.

AG ¶ 8 provides conditions that could mitigate security concerns:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign

individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligations 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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority.

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶ 7(a), 7(b), and 7(c) all apply because of Applicant's contact with family members (especially his wife), role in his village, and property in Nigeria.

AG ¶ 8(a) partially applies. Applicant's wife, mother, siblings, and step-siblings are citizens and residents of Nigeria. Applicant lives with his sister in the U.S. He has daily contact with his wife who is a citizen and resident of Nigeria. He has weekly contact with his mother, monthly contact with a brother, talks with his other siblings less frequently, and sees his relatives when he visits Nigeria twice a year. "It is unlikely [he] will be place in a position of having to choose between the interest of [his mother and sibling] and the interest of the U.S." his infrequent contacts (once or twice a year) and not particularly close relationship with his Nigerian relatives have a very low potential for forcing him to choose between the United States and Nigeria. He met his burden of showing there is "little likelihood that [his relationship with his Nigerian relatives] could create a risk of foreign influence or exploitation.

AG ¶ 8(b) partially applies. Applicant's brother is an elected government official, a vice local building chairman working for the governor. His step-sister is a retired police commissioner in Nigeria. There is no evidence that his mother or other relatives are or have been political activists, or are challenging the policies of the Nigerian Government. There is no evidence his wife, mother or other siblings, except for his brother and step-sister, currently work or have ever worked for the Nigerian Government, military, or new media, or that of any other

foreign government. There is no evidence that terrorists or the Nigerian Government have approached or threatened Applicant or his relatives for any reason. There is no evidence that his relatives living in Nigeria currently engage in activities which would bring attention to them or that they or other Nigerian elements are even aware of Applicant's work. As such, there is a reduced possibility that his relatives or Applicant would be targets for coercion or exploitation.

Applicant has "such deep and longstanding relationships and loyalties in the U.S., [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." Applicant lives with his sister in the U.S. who is a dual U.S. and Nigerian citizen. Applicant was born in Nigeria 53 years ago, but has lived 32 years in the U.S. He obtained his bachelor's degree in construction management in the U.S. and has worked for defense contractors for seven years. These mitigating conditions taken together are sufficient to fully overcome the foreign influence security concerns for all of his relatives except for his wife. He has such a close relationship with his wife, and such frequent contact with her that security concerns pertaining to SOR ¶ 1.c are not mitigated.

Guideline F, Financial Considerations

Revised Adjudicative (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant owes approximately \$24,000 on 19 past due obligations, even though he only admitted past due debt of \$14,000. Disqualifying Conditions AG ¶ 19(a),

“inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

In 2005, Applicant was divorced and went from a combined family income of \$125,000 to a single income of \$75,000. Applicant's financial problems were contributed to by his \$1,700 per month child support obligation (SOR ¶ 3.l, \$1,553 and ¶ 3.p, \$561) on which he is current. He is current on his \$776 monthly car payments. It cost \$2,000 to \$3,200 per year for Applicant to return to Nigeria to fulfill his duties as chief. After expenses he has \$1,200 monthly for discretionary spending.

AG ¶ 20(a) does not apply because the majority of his debts remain unpaid and his debts were not infrequent because there are 19 debts. Nor did they occur under unusual circumstances. The debts were joint obligations made while Applicant was married and either does not want to pay or refuses to pay.

AG ¶ 20(b) does not apply. Although Applicant was divorced, the divorce occurred three years ago and even with \$1,200 a month of discretionary income only one debt (SOR ¶ 3.m, \$1,115) has been paid. Applicant has not acted reasonably under the circumstances.

Applicant has not received financial counseling and there is no indication the problem is being resolved or is under control. AG ¶ 20(c) does not apply.

Applicant has paid the credit card debt listed in SOR ¶ 3.m (\$1,115). AG ¶ 20(d) applies to this debt and his child support obligation. An offer has been made by a creditor to settle a debt (SOR ¶ 3.y, \$1,212) for \$600. There is no documentation showing Applicant has accepted the offer or made payment in accord with the offer. I find against Applicant as to SOR ¶ 3.y.

AC ¶ 20(e) legitimately disputing a debt does not apply to any of the bills. Applicant does not want to pay the telephone debt in SOR ¶ 3.q (\$5,279) because his ex-wife incurred the bill. However, the debt was incurred during the marriage and the divorce decree does not require his ex-wife to pay the debt. Either Applicant has failed to show his dispute concerning his debts was reasonable or he has failed to provide documentation showing the basis of his dispute, or both.

Personal Conduct

The Government has shown Applicant's answer to a question in Section 17 was incorrect, but this does not prove the Applicant deliberately failed to disclose information about his finances. Applicant has denied intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully.

The omission related to a house and land in Nigeria. Applicant does not have exclusive use of the land in Nigeria, but is building a house on the property. The question asked Applicant if he had any foreign property, business connections, or financial interests. In answering the question, Applicant was thinking about the "business" and "financial interest" aspects of the question when he answered "no." He should have listed the house, but did not think the question was asking about a private home. Applicant did not provide an intentionally false answer.

In response to his arrests, Applicant did list the November 2005 domestic arrest. He could have given more information about being found guilty in May 2005, but he does not appear he was trying to hide the arrest from the government.

His SF-86 and 85P asked Applicant about his arrests during the seven years prior the completion of the forms. The 1994 arrest for soliciting a prostitute was not within the seven-year time period. Applicant was not required to list this arrest. Applicant did not show questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules for failing to list the 1994 arrest, failing to list the family land in Nigeria, or failing to provide a fuller explanation of his 2005 arrest that resulted in the 2006 conviction.

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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has relatives who are citizens and residents of Nigeria. His contact with them is limited except for his wife, who he contacts daily. However, he is chief of his village and does not want to give up that duty or renounce his Nigerian citizenship because doing so might interfere with his travel to Nigeria. He is building a house there, which indicates he is planning on living in Nigeria at some future time. He has delinquent debts which have not been adequately addressed.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his foreign influence, foreign preference and financial considerations.

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 C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT

Subparagraph 2.a: For Applicant
Subparagraph 2.b: For Applicant
Subparagraph 2.c: Against Applicant
Subparagraph 2.d: For Applicant

Paragraph 3, Guideline F: AGAINST APPLICANT

Subparagraphs 3.l, 3.m,
and 3.p: For Applicant
Subparagraphs 3.r-3.u: Struck as duplications of other debts.
Subparagraphs 3.a-k, 3.n,
3.o, 3.q, and 3v-z: Against Applicant

Paragraph 4, Guideline E: FOR APPLICANT

Subparagraph 4.a: For Applicant
Subparagraph 4.b: For Applicant
Subparagraph 4.c: 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.

CLAUDE R. HEINY II
Administrative Judge