



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-17614
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert E. Coacher, Esq., Department Counsel
For Applicant: Sunday Obinali Duru, Esq.

March 18, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the foreign influence security concern generated by his parents, who are both Nigerian citizens and residents. Clearance is granted.

Statement of the Case

On May 19, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, foreign influence. 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on September 8, 2009, admitting the allegations except SOR subparagraph 2.b, and requesting a hearing. The case was assigned to me on November 17, 2009. That day, DOHA issued a notice of hearing scheduling the case

for December 9, 2009, and I convened the hearing as scheduled. During the hearing, I received three government exhibits, five Applicant exhibits, and the testimony of two Applicant witnesses. Also, at the government's request, I took administrative notice of the facts set forth in seven exhibits marked as government exhibits (GE) 4 through 10. DOHA received the transcript on December 17, 2009.

Findings of Fact

Applicant is a 50-year-old married man with four pre-teen children. He has been married for 10 years. A previous marriage ended in divorce in 1999 (AE 4 at 5). Since 2001, Applicant has worked as a security guard (AE 1 at 3). He has worked with his current employer since 2008 (AE E). According to his supervisor, he is a reliable employee who "consistently performs his duties as an officer with merit and valor" (AE E). In 2007, Applicant received a certificate for completing a specialized training course for security officers (AE B).

Applicant earned a certificate in practical nursing in 2004 (AE C). Currently, he is studying to obtain the requisite licensing to enable him to work as a nurse part time (Tr. 44).

Applicant was born and raised in Nigeria. He immigrated to the United States (U.S.) in 1986 (Tr. 37). In 1991, he earned an associate's degree in science from a U.S. university (AE D). He became a naturalized U.S. citizen in 1996 (Tr. 37).

Applicant's wife is originally from Nigeria (AE 57). She became a naturalized U.S. citizen in 2007 (Tr. 40). She is a registered nurse. They own their home, valued at approximately \$400,000 (Tr. 40). Their net worth is approximately \$160,000 (Tr. 40). All of their assets are located in the U.S. (Tr. 40, 59).

Applicant's parents are citizens and residents of Nigeria. They live in a remote village in the eastern part of the country. His father is 87 years old, and his mother is 75 years old. Before retiring, his father owned a grocery store, and his mother was "a petty trader" (Tr. 51). Applicant talks with them twice per week (Tr. 36). Both parents are in fragile health (Tr. 52). Periodically, Applicant sends them money, averaging between two and three thousand dollars yearly, to assist with their health care (Tr. 51). He most recently sent them money in April 2009 (Tr. 52).

Applicant last visited his parents in the summer of 2008, staying for four weeks (Tr. 52). He visited the previous year when his father was sick (Tr. 52). Applicant has one sibling, a naturalized U.S. citizen and current U.S. resident.

Applicant's mother-in-law is a Nigerian citizen (Tr. 56). She has been living with Applicant and his family since 2005, and has a green card (Tr. 56). His father-in-law is deceased.

Applicant is active in the community. He serves on a committee at his church that coordinates charitable activities (Tr. 62). Also, he is active in the local parent teacher association (Tr. 62).

Nigeria is a federal republic composed of 36 states (GE 4 at 1-2). It has a bicameral legislature with a senate and a house of representatives (GE 5 at 4). Nigeria has a history replete with military coups, ethnic conflict, and civil war. The emergence of a democratic Nigeria in 1999 ended 16 years of consecutive military rule (GE 4 at 6). Since then, Nigeria's democratic institutions have progressed; however, they have been challenged by "poor governance, entrenched corruption, internal conflict, ineffective service delivery, and pervasive poverty" (*Id.* at 12). Approximately one million Nigerians live, study, and work in the U.S.

Nigeria's economic team is well-respected in the economic community (*Id.* at 10). Nigeria has recently taken many encouraging steps toward fostering a healthy investment atmosphere. It continues, however, to lack a highly developed infrastructure either for transportation or commerce (*Id.* at 9-10). Rural areas largely do not have access to banks (*Id.* at 9).

In 2007, Nigeria elected a new president, a political moderate who pledged publicly to reform the military and promote electoral reform (*Id.* at 6). Since then, he has "retired hundreds of military officers, ordered the release of scores of persons held without charge . . . [and] moved to recover millions of dollars in funds secreted in overseas accounts" (*Id.*). Also, the president's new administration has allowed the legislative and judicial branches to operate "relatively free" (*Id.* at 7). The new government has been taking steps to reach out to disaffected communities (AE 5 at 18). Respect for human rights has improved markedly under the new administration.

Nigeria is a staunch U.S. ally that lent strong diplomatic support after September 11, 2001 (GE 4 at 12). It continues to support military action against the Taliban and al-Qaeda. It has played a leading role in forging an anti-terrorism consensus in Africa (*Id.*). In November 2007, Nigerian security forces arrested a group of Islamic militants in northern Nigeria who were alleged to have ties to al-Qaeda (*Id.* at 21).

Nigeria has played a pivotal role in the promotion of peace in Africa (*Id.* at 11). Six thousand Nigerian peacekeepers are deployed on several United Nations' missions worldwide (*Id.* at 11).

In 2002, Nigeria and Cameroon, a contiguous neighbor, disputed an adjacent territory. Rather than engage in armed conflict, they resolved the dispute through the International Court of Justice (ICJ) at the Hague (*Id.*). After the ICJ awarded most of the territory to Cameroon, the Nigerian president promptly signed an agreement implementing the court's decision, and removed troops from the area within 60 days (*Id.*).

Nigeria has struggled with Islamic extremism, particularly in the majority-Muslim north (GE 5 at 15). Applicant's family lives in eastern Nigeria. Some communities have adopted *sharia*, a draconian legal system imposed by fundamentalist Muslims (*Id.*). In two cases, local courts, using *sharia* law, imposed the death penalty against two female defendants accused of adultery (*Id.*). State courts overturned both judgments on appeal (*Id.*).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). These guidelines are applied together with the factors listed in the adjudicative process. 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."

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.

Analysis

Guideline B, Foreign Influence

Under this guideline, "foreign contacts and interests may be a security concern if an 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 interests" (AG ¶ 6). The following disqualifying conditions are potentially applicable under AG ¶ 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;

(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, apply; and

(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.

Although Nigeria is a staunch U.S. ally and an emerging democracy, it is plagued by ethnic, religious, and class conflict. Also, its political and economic development is hampered by corruption, and the influence of Islamic extremists is growing in parts of the country. Under these circumstances, Applicant's contact with his parents residing in Nigeria, and his mother-in-law, a Nigerian citizen with legal U.S. residency status who lives with his family, triggers the application of AG ¶¶ 7(a), 7(b), and 7(d).

The potentially applicable mitigating conditions set forth in AG ¶ 8 are as follows:

(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 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; and

(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.

There is a presumption that contact with one's parents is not casual. Moreover, Applicant talks with his parents twice per week, visits approximately once per year, and provides financial support. AG ¶ 8(c) does not apply.

The country's concern with Islamic extremism is primarily in the north, whereas, Applicant's parents live in the eastern region. Moreover, despite its struggles in developing a representative democracy, Nigeria is firmly committed to the U.S.-led War on Terror, and is a regional leader in promoting anti-terror policy. Also, Nigeria has increasingly demonstrated its commitment to the international rule of law by resolving disputes with other countries peacefully through international tribunals, and sending peacekeepers, when requested, to areas of conflict worldwide.

Although Nigeria is a U.S. ally, friendly countries may be just as likely to conduct espionage against the U.S. as hostile ones. However, it is highly unlikely that Nigeria has an espionage system sophisticated enough to target either its rural inhabitants, such as Applicant's parents, or its citizens living abroad, such as Applicant's mother-in-law, when it has yet to develop a banking or transportation infrastructure that serves the entire country.

Applicant has lived in the U.S. for nearly 25 years. He received all of his education and training past high school in the U.S., all of his immediate family lives in the U.S., and all of his financial assets are in the U.S. Moreover, Applicant is heavily involved in his community, volunteering for outreach programs through his church and attending PTA meetings.

Under these circumstances, I conclude that both AG ¶¶ 8(a) and 8(b) apply. Applicant has mitigated the Foreign Influence security concern.

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.

Applicant is an industrious individual focused on excelling on the job, furthering his earning potential through education, and raising his children. Upon considering these factors, together with the relevant disqualifying and mitigating conditions, I conclude Applicant has carried his burden. Clearance is granted.

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
Subparagraphs 1.a - 1.c:	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.

MARC E. CURRY
Administrative Judge