



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-00899  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 15, 2008

**Decision**

HARVEY, Mark W., Administrative Judge:

Although Applicant mitigated the foreign influence and foreign preference security concerns, he failed to mitigate security concerns regarding personal conduct and financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 15, 2006, Applicant submitted a Security Clearance Application (e-QIP version) (hereinafter SF 86) (Item 4). On February 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him,<sup>1</sup> pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR alleges security concerns under Guidelines C (Foreign Preference), B (Foreign Influence), F (Financial

<sup>1</sup>Item 1 (Statement of Reasons (SOR), dated Feb. 7, 2008). Item I is the source for the facts in the remainder of this paragraph unless stated otherwise.

Considerations), and E (Personal Conduct).<sup>2</sup> The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing.<sup>3</sup> A complete copy of the file of relevant material (FORM), dated March 7, 2008, was provided to him, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.<sup>4</sup> On March 27, 2008, DOHA received Applicant's response to the FORM. The case was assigned to another Administrative Judge on April 2, 2008, and transferred to me on April 11, 2008.

### **Procedural Rulings**

Department Counsel requested administrative notice of the facts in the FORM concerning the Federal Republic of Nigeria (FORM at pages 5-8) and supporting documents to show detail and context for the facts in the FORM (Items 9-12—listed in FORM at 2). Applicant did not object to me taking administrative notice.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings, is to accorded to facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). In addition to the facts outlined in the FORM at 5-8, I have taken administrative notice of facts in Items 9-12. See the Nigeria section of the Findings of Fact of this decision, *infra*.

Department Counsel requested amendment of SOR ¶¶ 4.a and 4.b, changing the date of Applicant's security clearance application from March 14, 2006, to March 15, 2006 to conform with Applicant's security clearance application (FORM at 4 n. 7). Applicant did not object to the amendment, and it is granted.

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<sup>2</sup>On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case because his SOR was issued after Sep. 1, 2006.

<sup>3</sup>Item 3 (Applicant's response to SOR).

<sup>4</sup>The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated Aug. 30, 2007; and Applicant's receipt is dated October 5, 2007. The DOHA transmittal letter informed Applicant that he had 30 days after Applicant's receipt to submit information.

## **Findings of Fact<sup>5</sup>**

Applicant admitted the SOR allegations in his response to the SOR (Item 3), his response to interrogatories (Item 5), and his FORM response (FR). All of these documents included Applicant's explanations about why he believed the security concerns were mitigated. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant has never married (Item 4). He has not served in the United States or Nigerian military (Item 4). He was born in Nigeria 32 years ago (FR at 2). His parents brought him to the United States when he was four years old (FR at 2). He became a U.S. citizen on November 30, 1995 (FR at 2, 17). He attended U.S. schools for his education, completing a Masters of Science in Information Management (FR at 2). He worked for defense contractors for seven years (FR at 2). Applicant is active in his church (FR at 3-4).

On March 7, 2008, Applicant received notification that he will be laid off from his employment effective March 21, 2008 (Item 3 at 29). The loss of employment is due to a government stop work order on a project, and Applicant's inability to maintain his clearance (Item 3 at 29). His "termination is classified as a Reduction-In-Force (RIF)" (Item 3 at 29). A fax to Department Counsel asks for expeditious processing of his security clearance, and requests that the RIF notice be added to his file (Item 3 at 28).

### **Foreign Preference (Guideline C)<sup>6</sup>**

Applicant asked his aunt living in Nigeria to apply for a passport for him because he believed travel would be more convenient if he had a United States passport and a Nigerian passport (Item 3 at 1, 4-5, 19, 24-28). His aunt applied for and Nigeria approved a passport for Applicant on January 22, 2003, which was after he became a U.S. citizen on November 30, 1995 (FR at 8-10). His aunt provided an affidavit that she kept Applicant's Nigerian passport and she never gave his Nigerian passport to him (FR at 9). As of November 2007, he indicated he did not have the Nigerian passport that his aunt received (Item 5 at 8-9, 48). On January 9, 2008, he requested that the U.S. Consulate General in Nigeria immediately destroy his Nigerian passport (FR at 16). His Nigerian passport expired on January 21, 2008 (FR at 9).

### **Foreign Influence (Guideline B)**

Applicant's aunt is a citizen and resident of Nigeria. She is a teacher (Item 5 at 50). He communicates with her once or twice a year (Item 5 at 50). She has not made any requests for information concerning his Department of Defense-related employment (Item 5 at 51).

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<sup>5</sup> The facts in this decision do not specifically describe employment or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

<sup>6</sup> Applicant provided a copy of his Nigerian passport, which expired on July 15, 1988 (Item 5 at 4-7).

Applicant traveled to Nigeria on December 22, 2002, and stayed in Nigeria until January 19, 2003 (Item 3, FR at 15). He went to Nigeria to clear his head because he had recently been laid off from his employment (FR at 3). This trip allowed him to reconnect with his roots and visit his aunt.

Applicant's father, mother, brother, sister, uncle, aunt, and two cousins are U.S. citizens, and all reside in the United States (FR at 4, 20). His mother is also a citizen of Nigeria (Item 5 at 29).

## **Nigeria<sup>7</sup>**

Nigeria is a federal republic that gained independence from Britain in 1960. Nigeria suffers from political instability, economic crisis, ethnic and religious conflict, extreme poverty, lack of law and order, judicial corruption and a history of military coups. The military has ruled Nigeria for 28 of its 43 years since independence. In May 1999, Nigeria returned to civilian rule. Nigeria is Africa's largest oil producer, and conflict results from perceptions of uneven and/or unfair distribution of oil revenue. Lawless elements have engaged in kidnapping for ransom in the Niger Delta area. Heavily armed rival militias engage in conflict. The Nigerian government has committed human rights violations, and security forces have committed politically motivated, extrajudicial killings as well as torture and arbitrary arrest.

## **Financial Considerations (Guideline F)**

Applicant was unemployed from about April to December 2003 (Item 5 at 30), or possibly from August 2002 to September 2003 (Item 5 at 51). He fell behind on two accounts (Item 5 at 30). He was also unemployed from April 2005 to June 2005 (Item 5 at 51).

Two debts were placed for collection in the amounts of \$6,542 and \$4,961's. On June 9, 2004, Applicant made an agreement with a credit consolidation company (CCC) to resolve his debts (FR at 29-30). His first 13 payments were for a service fee of \$1,387 (Item 5 at 55). He made eight monthly payments of either \$83.22 or \$184.94 in 2004 to CCC (FR. at 29-31). He made monthly payments of \$83.22 the first seven months of 2005 (FR at 29-31). CCC indicated a belief that these two debts could be settled for 40% of face value (Item 5 at 57).

On December 6, 2006, he wrote the two creditors asking for a settlement amount (FR at 36-39). He offered to pay one creditor \$1000 initially and then to make \$250 monthly payments (FR at 37). He became aware of the security significance of his two delinquent debts when an OPM investigator interviewed him on July 12, 2007 (Item 5 at 50). A letter dated March 18, 2008, from CCC indicated he paid all CCC's fees on time (FR at 27). CCC's letter did not describe any payments Applicant made after 2005, or indicate CCC had paid the two creditors anything.

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<sup>7</sup>The FORM at 5-8 is the primary source for the facts in this section.

Applicant's annual gross salary is \$88,932 (FR at 45). His payments are current on his mortgage, and he paid off his car (FR at 5, 40-43). He has also been making payments on his student loan of about \$5,000 (FR at 59). His gross pay for the two weeks from March 1-14, 2008, is \$3,420; and his net pay is \$2,411 (FR at 58). His contractor's account statement of February 11, 2008, indicates he had \$9,977 in a 401K and \$5,559 in a loan balance (Item 3 at 21; FR at 56). Another savings account statement of January 31, 2008, indicated a balance of \$2,779 (FR at 52). His money market/stock statement of January 31, 2008, indicated a balance of \$2,576 (FR at 54).

A credit report dated March 4, 2008, lists one of the two debts described previously as currently delinquent (Item 6 at 1, 5). In response to the FORM, Applicant gave the status of the two debts as follows:

. . . [CCC's] method of operations requires the client to not contact the creditors personally, transfer any future correspondence to their company, and save as much as possible towards the negotiation of satisfying the credit card debt (see RFM-A). I complied and have to date saved enough money for [CCC] to conduct its negotiations (see RFM-G). In addition my current salary allows me to continually fund these accounts for the purpose of paying off the debt accordingly. [CCC] [a]ssured me that the matters are still pending and that I should be patient. At this point, I believe contacting the creditors directly may compromise the work that I have paid [CCC] to do. I am not in the habit of accumulating debt nor do I enjoy maintaining debt as well.

FR at 3. On February 28, 2008, Applicant said he has the means to pay the two debts, and provided proof of payments to CCC in 2004 and 2005 (Item 3 at 20-23). Applicant did not provide proof of any payments to CCC in at least two years. There is no evidence that CCC has negotiated in good faith with Applicant's two creditors or paid the two creditors anything.

### **Personal Conduct (Guideline E)**

Applicant's SF 86, executed on March 14, 2006, asked two questions that are relevant to the issue of whether Applicant falsified his SF 86:

**Section 17. Your Foreign Activities** . . . d. In the last 7 years, have you had an active passport that was issued by a foreign government?

**Section 28. Your Financial Delinquencies** a. Fin the last 7 years, have you been over 180 days delinquent on any debt(s)? b. Are you currently over 90 days delinquent on any debts?

Applicant answered, "No" in response to these questions. On January 8, 2008, he explained why he did not disclose the requested information for Section 17, "I did not have [my Nigerian passport] in my possession at that time. It was with my aunty in

Lagos, Nigeria. So I did not believe that it was crucial to the investigation.” (Item 3 at 3). For his negative response to Section 28, he explained:

When I was asked to list my delinquent debts on the [security clearance application], I didn't realize in government everyone is responsible for divulging their financial status to this extent. Since I am in the process of rectifying the situation, it did not appear to me to relay (sic) all of the details concerning this issue.

Item 5 at 30.

### **Employee Performance**

Applicant worked for his current employer for two years. He received two pay raises (FR at 44-45). He actively sought further education and improvement of his technical qualifications (FR at 50). His employee evaluations indicate he exceeds the company's objectives (FR at 46, 47, 49). He displayed excellent execution of his duties, and met or exceeded all technical goals (FR at 46). He satisfied all team development and leadership responsibilities (FR at 49). He is a versatile, diligent and dedicated employee (FR at 51). Applicant is a critical asset to his office (FR at 51). He “provides expert-level systems engineering support” to a vital command in the war (FR at 22). He is very important for mission accomplishment (FR at 23). He provided a detailed resume of his technical accomplishments and work experience (FR at 18-19).

### **Policies**

In an evaluation of an applicant's security suitability, an administrative judge must consider Enclosure 2 of the Directive, which sets forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into disqualifying conditions and mitigating conditions, which are used to determine an applicant's eligibility for access to classified information.

These adjudicative guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process provision in Section E2.2, Enclosure 2, of the Directive. An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision.

Because the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept,” an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that the issuance of the clearance is “clearly consistent with the interests 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.

In the decision-making process, facts must be established by “substantial evidence.”<sup>8</sup> The government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to the applicant to produce evidence and prove a mitigating condition. Directive ¶ E3.1.15 provides, “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, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).<sup>9</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an 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.

The scope of an administrative judge’s decision is limited. Applicant’s allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance 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* Executive Order 12968 (Aug. 2, 1995), Section 3. Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism.

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<sup>8</sup> “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>9</sup>“The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, [evaluates] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and [decides] whether Applicant [has] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

## Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

### Foreign Preference

AG ¶ 9 articulates the security concern about foreign preference, stating, “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.” Three conditions under AG ¶ 10 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;

\* \* \*

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

\* \* \*

(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.

Applicant became a U.S. citizen by virtue of naturalization in 1995. He subsequently applied for a Nigerian passport, which his aunt received on his behalf. His actions to obtain a Nigerian passport show some allegiance to, and an ongoing relationship with Nigeria. Disqualifying conditions under AG ¶¶ 10(a)(1), 10(b) and 10(d) apply.

Under AG ¶ 11, conditions that could mitigate foreign preference security concerns include:

(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;

(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.

Applicant's aunt applied for and Nigeria approved a passport for Applicant on January 22, 2003, which was after he became a U.S. citizen on November 30, 1995 (FR at 8-10). His aunt received Applicant's Nigerian passport; however, she never gave it to Applicant (FR at 9). On January 9, 2008, he requested that the U.S. Consulate General in Nigeria immediately destroy his Nigerian passport. His passport expired on January 21, 2008. AG ¶ 11(e) applies and mitigates the Foreign Preference security concerns.

## **Foreign Influence**

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

if the individual has divided loyalties or foreign financial interests, [he or she] 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 indicates two conditions that could raise a security concern and may be disqualifying in this case:

(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; and

(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.

Applicant traveled to Nigeria on December 22, 2002, and stayed in Nigeria until January 19, 2003. He communicates with his aunt, who is a resident and citizen of Nigeria, once or twice annually. The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an Applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress 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 United States. The complicated relationship of Nigeria places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationship with his aunt in Nigeria does not pose a security risk and he is not in a position to be forced to choose between loyalty to the United States and his family members.<sup>10</sup> With its mixed human rights record, and other political, economic and military problems, it is conceivable that Nigeria would target any citizen in an attempt to gather information from the United States.

While there is no evidence that Nigerian intelligence operatives seek classified or economic information from United States' businesses, Applicant's connections to his Nigerian aunt create a potential conflict of interest because his relationship is sufficiently close to raise a security concern about his desire to help his aunt or Nigeria by providing sensitive or classified information.

The Government produced substantial evidence of Applicant's contacts with his Nigerian aunt, his relationship with his Nigerian aunt, and his travel to Nigeria in 2002-2003 to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

- (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

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<sup>10</sup> An applicant with relatives in Iran, for example, has a much heavier burden to overcome than an applicant with relatives living in Nigeria. See ISCR Case No. 02-13595 at 3 (App. Bd. May 10, 2005) (stating an applicant has "a very heavy burden of persuasion to overcome the security concerns" when parents and siblings live in Iran). See also ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006) (articulating "very heavy burden" standard when an applicant has family members living in Iran). See also ISCR Case No. 06-17164 at 15 (A.J. Oct. 23, 2007) (listing 23 consecutive cases involving U.S. citizens with Iranian connections whose clearances were denied).

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;

(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 ¶¶ 8(a) and 8(c) partially apply. Because of his limited contact with his aunt, "it is unlikely [he] will be placed in a position of having to choose between the interests of [his aunt] and the interests of the U.S." His infrequent contacts (once or twice a year) and not particularly close relationship with his Nigerian aunt have a very low potential of forcing him to choose between the United States and the Nigeria. He met his burden of showing there is "little likelihood that [his relationships with his Nigerian aunt] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. There is no evidence that his aunt is or has been a political activist, challenging the policies of the Nigerian Government. There is no evidence his aunt currently works or ever worked for the Nigerian Government or military or any news media. There is no evidence that terrorists or the Nigerian Government have approached or threatened Applicant or his aunt for any reason. There is no evidence that his aunt living in Nigeria currently engages in activities which would bring attention to her or that she or other Nigerian elements are even aware of Applicant's work. As such, there is a reduced possibility that his aunt 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." His father, mother, brother, sister, uncle, aunt, and two cousins are U.S. citizens, and all reside in the United States. However, his mother is also a citizen of

Nigeria. Applicant was born in Nigeria 32 years ago. His parents brought him to the United States when he was four years old. He became a U.S. citizen on November 30, 1995. He attended U.S. schools for his education, completing a Masters of Science in Information Management. He worked for defense contractors for seven years.

AG ¶ 8(f) partially applies because he has no interest in property in Nigeria and he has significant U.S. property and assets. These mitigating conditions taken together are sufficient to fully overcome the foreign influence security concerns.

## **Financial Considerations**

AG ¶ 18 articulates the security concern 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.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations."

Applicant's history of delinquent debt is documented in his credit report, his interview by an Office of Personnel Management (OPM) investigator, his SOR response, his response to interrogatories, and his FORM response. Throughout this process, he had admitted responsibility for two delinquent debts, totaling about \$9,000. These two debts are currently delinquent. He has provided insufficient documentation to show significant progress resolving these two debts. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

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.

Applicant was unemployed from about April to December 2003, or possibly from August 2002 to September 2003. He fell behind on two accounts. He was also unemployed from April 2005 to June 2005. However, AG ¶ 20(b) does not fully apply because he did not act responsibly after he became fully employed to resolve the two delinquent debts, totaling about \$9,000. He admitted he had sufficient funds to pay these two delinquent debts.

Applicant started to address his two delinquent debts in June 2004 when he reached an agreement with CCC to resolve the two debts. He made payments to CCC in 2004 and 2005, but there is no evidence CCC passed any of Applicant's payments to the creditors. Applicant was well aware that no settlement was ever reached with his creditors. He became aware of the security significance of his two delinquent debts when an OPM investigator interviewed him on July 12, 2007. The importance of resolving his two delinquent debts was reinforced when he received the SOR on February 7, 2008. However, he did not provide evidence that he did anything beyond checking on the status of his account with CCC.

Applicant did not provide correspondence with his two creditors disputing the two delinquent debts. He did not establish that he made a good faith effort to repay the two delinquent debts, or show sufficient conditions beyond his control or mitigating circumstances to mitigate security concerns. His financial problems are continuing and likely to recur. He should have been more diligent and made greater efforts to resolve his two delinquent debts. He has not carried his burden of proving his financial responsibility. There are not clear indications his two delinquent debts are being resolved. His overall conduct with the two creditors casts doubt on his current reliability, trustworthiness, and good judgment, and I conclude no mitigating conditions fully apply.

### **Personal Conduct (Guideline E)**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant's 2006 SF 86 asked, "**Section 17. Your Foreign Activities** . . . d. In the last 7 years, have you had an active passport that was issued by a foreign government?" He answered, "No." Technically, he never had the Nigerian passport because his aunt always retained it. He did not provide a deliberately false answer to Section 17.

Applicant's 2006 SF asked, "**Section 28. Your Financial Delinquencies** a. In the last 7 years, have you been over 180 days delinquent on any debt(s)? b. Are you currently over 90 days delinquent on any debts?" Applicant answered, "No" to Section 28. For his negative response to Section 28, he explained, "When I was asked to list my delinquent debts on the [security clearance application], . . . [s]ince I am in the process of rectifying the situation, it did not appear to me to relay (sic) all of the details concerning this issue." I conclude he deliberately failed to disclose his delinquent debts. AG ¶¶ 16(a) and 16(b) apply.

AG ¶ 17 provides seven conditions that could mitigate personal conduct security concerns in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is

unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions in AG ¶ 17 apply. Applicant's falsification of his SF 86 on March 15, 2006, is recent. He did not promptly inform the government of the falsification. He did not receive counseling designed to improve his conduct. No one advised him to falsify his SF 86. He admitted the false statement at issue, and the falsification of his SF 86 is substantiated. The falsification of his 2006 SF 86 casts doubt on his current reliability, trustworthiness, and good judgment.

### **Whole Person Concept**

In all adjudications, the protection of our national security is the paramount concern. The adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of his or her acts, omissions, and motivations as well as various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances and applying sound judgment, mature thinking, and careful analysis. Under the whole person concept, the Administrative Judge should consider the nine adjudicative process factors listed at Directive ¶ E2.2.1:

(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 voluntariness of participation; (6) The presence or absence of rehabilitation and other pertinent 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 Directive ¶ E2.2.3, “The ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense determination based upon careful consideration” of the guidelines and the whole person concept.

A Guideline B decision concerning Nigeria must take into consideration the geopolitical situation in Nigeria, as well as the dangers existing in Nigeria.<sup>11</sup> While there is no evidence Nigeria is a known collector of U.S. intelligence and sensitive economic information, Nigeria has very serious economic, military, political, judicial/legal and social problems.

Applicant traveled to Nigeria on just one occasion more than five years ago. His ties to his aunt living in Nigeria with whom he has communications once or twice a year establish at least a minimal level of ties of affection to her. There is a very slight possibility that Applicant could 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 United States.

Applicant was born in Nigeria 32 years ago, and has lived in the United States the last 28 years. He became a U.S. citizen on November 30, 1995. He attended U.S. schools for his education, completing a Masters of Science in Information Management. His father, mother, brother, sister, uncle, aunt, and two cousins are U.S. citizens, and all reside in the United States. His mother is also a citizen of Nigeria. He worked for government contractors for seven years. His performance evaluations, and letters laud his hard work, dedication and contributions to the contractor and the Department of Defense. He is active in his church.

Applicant requested a Nigerian passport after he became a U.S. citizen. His aunt received it at his request and held it for him, creating a *de facto* agency relationship. He never physically possessed his Nigerian passport. He asked the embassy to revoke it. It has now expired. After weighing the evidence of his connections to Nigeria and to the United States, and all the facts in this decision, I conclude Applicant has carried his burden of mitigating the foreign influence and foreign preference security concerns.

Applicant was unemployed from almost a year in the 2002 to 2003 time period. He fell behind on two accounts, totaling about \$9,000. He was also unemployed from April 2005 to June 2005. He started to address his two large delinquent debts in June 2004 when he reached an agreement with CCC to resolve the debts. He made payments to CCC in 2004 and 2005, but there is no evidence CCC passed any of Applicant’s payments to the creditors. Applicant was well aware that no settlement was ever reached with his creditors. He did not provide evidence that he did anything beyond checking on the status of his account with CCC. He did not act responsibly after he became fully employed to resolve the two delinquent debts. He admitted he had sufficient funds to pay these two debts.

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<sup>11</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).



Applicant deliberately failed to disclose his delinquent debts on his 2006 security clearance application. This recent falsification has a serious negative impact on my security clearance determination because it damages his integrity and trustworthiness. Even if he had paid his two delinquent debts after receiving his SOR, I would still deny his security clearance for falsifying his 2006 security clearance application.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors”<sup>12</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, all the evidence in this decision, especially his contributions to his employer, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is not eligible for access to classified information.

### **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:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Mark W. Harvey  
Administrative Judge

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<sup>12</sup>See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).