



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



In the matter of:)
)
-----) ISCR Case No. 08-03899
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro Se*

March 23, 2009

Decision

HARVEY, Mark W., Administrative Judge:

Applicant is a security guard, who seeks eligibility for access to classified information. He has significantly greater contacts with the United States than with Nigeria, where he was born, or with Sierra Leone, where some of his spouse's relatives live. He can be expected to resolve any conflict of interest in favor of the U.S. interest. Foreign influence security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On May 11, 2007, Applicant submitted a Security Clearance Application (e-QIP version) (hereinafter SF 86) (Government Exhibit (GE) 1). On December 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, alleging security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD) Regulation 5200.2-R, *Personnel*

Security Program, dated Jan. 1987, as amended (Regulation), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006. 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.

On January 5, 2009, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 2, 2009. The case was assigned to me on February 3, 2009. On February 10, 2009, DOHA issued a hearing notice. The hearing was held on March 2, 2009. At the hearing, Department Counsel offered three exhibits (GEs 1-3) (Transcript (Tr.) 24-25), and Applicant offered two exhibits (Tr. 28-29; AE A-B). There were no objections, and I admitted GEs 1-3 (Tr. 26), and AEs A-B (Tr. 29-30). Additionally, I admitted the SOR, response to the SOR and the hearing notice (GEs 4-6). I received the transcript on March 13, 2009. I granted a delay until March 12, 2009, to permit Applicant to provide additional letters from character references (Tr. 14-15, 19-20, 94). On March 19, 2009, I received an additional character reference (AE C). Department Counsel did not object to my consideration of AE C, and I admitted it into evidence.

Procedural Rulings

Department Counsel requested administrative notice of facts concerning the Federal Republic of Nigeria (hereinafter Nigeria) and Sierra Leone (Tr. 24, 26; GE 4, 5). Department Counsel provided supporting documents to show detail and context for these facts in the Administrative Notice request. Applicant and Department Counsel did not object to me taking administrative notice of the facts in the cover document prepared by Department Counsel and a map of Nigeria, as opposed to taking administrative notice of all of the facts in all of the documents (Tr. 18, 79-80). See the Nigeria and Sierra Leone sections of the Findings of Fact of this decision, *infra*, for the material facts from Department Counsel's submissions on these two countries.

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) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings, is 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).

Findings of Fact¹

Applicant admitted the SOR allegations in his response to the SOR (GE 5). 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 is 49 years old (Tr. 30). In 1979, he graduated from a high school in Nigeria (Tr. 30). Applicant worked on his masters degree in financial management at a U.S. university for about a year in the late 1980s (Tr. 5-6, 32). He does not currently hold a security clearance (Tr. 7). He performs security services and his main function is to check people who enter his building (Tr. 8). Prior to his current position, he worked with mentally handicapped adults as a certified nursing assistant (Tr. 34-35). He was active in his neighborhood regarding safety issues (Tr. 76).

Applicant was born in Nigeria and immigrated to the United States in 1982 on a student visa (Tr. 30-31). He is from the eastern portion of Nigeria (Tr. 41). In 1986, he received a bachelor's degree from a U.S. university (Tr. 23, 31-32). He majored in banking and finance (Tr. 32). In 1996, he became a U.S. citizen (GE 3 at 5).

Applicant's family living in the United States

In 1997, Applicant married a citizen of Liberia (Tr. 36-37). In 1989, his spouse came to the United States, and she is now a permanent resident of the United States (Tr. 36, 64). She is employed as a nurse (Tr. 65, 73). She is working on obtaining her U.S. citizenship (Tr. 36). She has a Liberian passport; however she has not traveled to Liberia or Sierra Leone since they were married in 1997 (Tr. 36-37).

Applicant's wife's mother, father, and sister are citizens of Liberia; however, his wife's mother and sister live in Sierra Leone in the same household (Tr. 36, 62, 64). His wife's mother has not visited the United States (Tr. 66). His wife calls her mother about four times per year on the telephone (GE 3 at 5). His wife's sister is married, and his wife's sister's husband is a citizen of Sierra Leone (Tr. 65). His spouse does not have any other brothers or sisters (Tr. 63).

Applicant's three children were born in the United States and have never been outside the United States (Tr. 66). They are U.S. citizens and are not citizens of any other country (Tr. 74). The twins are seven years old, and his son is five years old (Tr. 67). Applicant places his highest priority on his children's welfare, and his family members living in Nigeria are of lesser importance to him (Tr. 78).

Applicant and his spouse own a home in the United States (Tr. 67). They are current on their mortgage payments (Tr. 68). Applicant has a 401K retirement account with his current employer, and a retirement plan with a previous U.S. employer (Tr. 68-

¹The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

69). Applicant pays his U.S. taxes and votes in U.S. elections (Tr. 69). He coaches his children's soccer team (Tr. 70-71). Applicant plans to retire in the United States (Tr. 71).

Applicant's family members living in Nigeria

In 1996, Applicant's mother died in Nigeria (Tr. 37-38). His father lives in Nigeria and is about 88 years old (Tr. 38). His father remarried and lives with Applicant's stepmother (Tr. 39, 44). His father is retired from working (Tr. 39). Applicant's brother, B, drives the bus that his father owns (Tr. 39-40). Applicant most recently spoke with his father around Christmas of 2008 (Tr. 59). Applicant used to speak to his father about once a month on the telephone; however, now they communicate less often because his father's hearing is not very good (Tr. 59). None of Applicant's brothers, sisters, brothers-in-law, or sisters-in-law have ever been in jail (Tr. 51).

Applicant talks to family members in Nigeria if there is an illness or big problem (Tr. 60). He might communicate with his brother, B, once a month (Tr. 60). They discuss family matters such as health, and how their children are doing (Tr. 72). They use the telephone and not email or paper mail for their communications (Tr. 75).

Applicant's brothers, B and R, are citizens and residents of Nigeria (Tr. 45-46). B is not married and does not have any children. B is not in the military, and does not work for the government (Tr. 45). R is self-employed in importing and exporting (Tr. 47). R has an import/export license from the government (Tr. 48). R is married and has four children under the age of 18 (Tr. 49).

Applicant's sister, A, is a resident and citizen of Nigeria. A is married (Tr. 49). A's husband, H, works in the construction industry (Tr. 50). H has never worked for the government (Tr. 51). One of A's children has graduated from a university (Tr. 50). A's other two children are under age 18 (Tr. 50).

Applicant's sister, C, is a resident and citizen of Nigeria. C is married and has three children over the age of 18 (Tr. 52). One of C's children has graduated from university and two of C's children are attending university (Tr. 53). C's husband is self-employed in importing and exporting (Tr. 53). He has an import/export license from the government (Tr. 53). The Nigerian government has never employed C's husband and he has not served in the Nigerian military (Tr. 53-54).

Applicant's sister, D, is a resident and citizen of Nigeria (Tr. 54). D is married and manages a beauty salon (Tr. 54). D's husband works at a saw mill (Tr. 55). D has three children over the age of 18 (Tr. 55). One of D's children has graduated from university and one of D's children is attending university (Tr. 55).

Applicant's father, stepmother, brothers, sisters, brothers-in-law, sisters-in-law and nephews and nieces have not visited Applicant in the United States (Tr. 56-57). Some of his family members live in the approximate vicinity of the Niger Delta states, which is especially known for a problem with kidnappings. The last time Applicant went to Nigeria was for his mother's funeral in 1997 (Tr. 56). He will probably visit Nigeria

before his father dies, but does not intend to travel to Nigeria in 2009 (Tr. 61). Applicant sent some money to Nigeria when his mother was sick and about a year ago when his father was sick he sent about \$500 (Tr. 57). He does not provide any money to other Nigerian family members because they do not need it (Tr. 72). He does not have any property in Nigeria (Tr. 58).

Applicant provided a character reference from a Training Coordinator employed by the contractor (AE A). She noted Applicant began his employment on in April 2007, and indicated Appellant “has demonstrated a professional image without compromising the integrity of his position. He has not displayed a behavior that would not deem him worthy to be granted a clearance with the government.” A Command Sergeant Major, who has known Applicant for more than seven years, lauded his professional and positive attitude as well as his initiative and sound judgment (AE C).

Nigeria

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. Nigeria has a poor human rights record. 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.

The Niger Delta states are particularly noted for kidnappings by lawless elements. In 2008, the Nigerian Government detained U.S. citizens on six separate occasions after travel to the Niger Delta Region.

Sierra Leone

Sierra Leone is a republic with a multi-party system of government. In 2002, a civil war in Sierra Leone ended. United Nations peacekeepers left in December 2005, and the government now provides security. The government of Sierra Leone generally respects the human rights of citizens; however, there have been reports of police corruption and crime, and various situations where government agents or entities have committed serious human rights violations. The poor state of the economy has led many to turn to crime, and corruption occurs at all levels of government.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v.*

Egan, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the Applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [A]pplicant concerned.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, 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. It is merely an indication the Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the Applicant that may disqualify the Applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an Applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the Applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An Applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). 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). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

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 Guideline B (Foreign Influence) is the relevant security concern with respect to the allegations set forth in the SOR.

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 three 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; 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.

Applicant was born in Nigeria and traveled to Nigeria in 1997 for his mother’s funeral. He intends to travel to Nigeria at some time in the future before his father, who is 88, dies. He has two brothers and three sisters, who are residents and citizens of Nigeria. He communicates with his father about once a month and to his siblings about

once a month using the telephone. They discuss family matters such as how their children are progressing and everyone's health.

His spouse's mother, sister, brother-in-law and sister's family live in Sierra Leone and are citizens of Liberia and/or Sierra Leone. His spouse calls her mother about four times a year on the telephone.

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 collection operations against the United States. The relationships of Nigeria and Sierra Leone with the United States, place a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationship with his family in Nigeria and his spouse's relationship with her family living in Sierra Leone do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to protect his family members living in a foreign country from harm or coercion.² With their negative human rights record, and high levels of crime in Nigeria and Sierra Leone as well as other political, economic and military problems in these countries, it is conceivable that anyone living in Nigeria or Sierra Leone might be targeted by governmental or non-governmental, criminal elements in an attempt to gather information from the United States.

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

² 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); ISCR Case No. 07-12471 at 9 (A.J. May 30, 2008) (listing recent cases involving U.S. citizens with Iranian connections whose clearances were denied).

The Government produced substantial evidence of Applicant's contacts with his relatives living in Nigeria and Sierra Leone, and his possible future travel to Nigeria before his father dies to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(d) apply and further inquiry is necessary.

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 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;

(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 relatives living in Nigeria and Sierra Leone, especially his lack of travel to Sierra Leone and his lack of travel to Nigeria since 1997, "it is unlikely [he] will be placed in a position of having to choose between the interests of [his relatives in Nigeria and Sierra Leone] and the interests of the U.S." However, his contacts by telephone (once a month with his father and monthly with his siblings and his wife calls her mother four times a year) are sufficiently frequent to raise the possibility of forcing him to choose between the United States and the welfare of his relatives living in Nigeria and Sierra Leone. He is not able to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives in Nigeria and Sierra Leone] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. There is no evidence that his relatives living in Nigeria or Sierra Leone are or have been political activist(s), challenging the policies of their governments. There is no evidence that his relatives living in Nigeria or Sierra Leone currently work or ever worked for the governments or military or any news media. There is no evidence that terrorists or the governments of Nigeria or Sierra Leone have approached or threatened Applicant or his relatives living in Nigeria or Sierra Leone for any reason. There is no evidence that his relatives living in Nigeria or Sierra Leone currently engage in activities which would bring attention to them or that hostile or potentially hostile elements in Nigeria or Sierra Leone are even aware of Applicant's work. As such, there is a reduced possibility that his relatives living in Nigeria and/or Sierra Leone or Applicant himself would be targets for coercion or exploitation. While the government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a very heavy evidentiary burden to overcome to mitigate foreign influence security concerns.

A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." He must establish that "[he] can be expected to resolve any conflict of interest in favor of the U.S. interest." Applicant is a U.S. citizen. He received his post-secondary education in the United States. His three children are U.S. citizens, and all reside in the United States. His three children have never left the United States. His spouse is a permanent resident of the United States who intends to become a U.S. citizen. Applicant was born in Nigeria 49 years ago and moved to the United States in 1982, 26 years ago. He owns a home in the United States, has a 401K in the United States and a retirement plan with a former U.S. employer. He intends to retire in the United States. His connections to Sierra Leone and Nigeria are quite limited. He has not visited Nigeria since his mother's funeral in 1997, and has never visited Sierra Leone. He does not own property in Nigeria or Sierra Leone. His only connections to these countries are relatives living in those countries who communicate with him over the telephone about their family situations.

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

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 have incorporated my comments under Guideline B in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

A Guideline B decision concerning Nigeria and Sierra Leone must take into consideration the geopolitical situation in those two countries, as well as the dangers existing in Nigeria and Sierra Leone.³ While there is no evidence either of these two countries are known collectors of U.S. intelligence and sensitive economic information, they both have very serious economic, military, political, judicial/legal and social problems.

Applicant has not traveled to Nigeria since his mother's funeral in 1997 and has never traveled to Sierra Leone. His ties to his father, siblings, in-laws, and their children are limited to telephone calls for family news and payment of about \$500 for his father's medical needs. His communications establish ties of affection to his Nigerian family members. There is some 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, especially because Nigeria and Sierra Leone have a significant lawless element, who may attempt to harm Applicant's relatives to gain some kind of advantage over Applicant.

Applicant was born in Nigeria 49 years ago, and has lived in the United States since 1982. He became a U.S. citizen in 1996. He attended a U.S. university and graduate school for his education. His three children are U.S. citizens, and all reside in the United States. He worked for a government contractor since 2007 as a security guard. An employee of his company and a command sergeant major lauded his dedication, good judgment and professionalism. He is active in his community and coaches soccer for his children's team. Although the possibility of attempted exploitation of Applicant is relatively low, Applicant's strong connections to the United States and especially to his children establish "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."

In a 2006 decision, the Appeal Board held the Judge properly determined under the "whole person" concept that an applicant with very significant connections to Russia had mitigated security concerns under Guideline B. In ISCR Case No. 03-04300, 2006

³ 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).

DOHA Lexis 264 at *17-*21 (App. Bd. Feb. 16, 2006),⁴ the applicant had weekly contact with her mother (who lives in Russia), contact three times per year with her aunt (who lives in Russia); contact about four times per year with her father-in-law (who lives in Russia); and multiple annual contacts with other relatives living in Israel. She had visited her family in Russia and Israel, on more than one occasion, after immigrating to the United States. Moreover, she owned a half interest in her mother's apartment in Russia, and provided financial support to her mother and aunt. The Judge's whole person analysis (that the Appeal Board determined was sufficient to mitigate such significant foreign influence security concerns) provides:

Looking at all of [whole person] factors, I conclude Applicant has overcome foreign influence security concerns. Given her strong ties to the U.S. and her limited contact with Russia and Israel since she became a U.S. naturalized citizen, there is limited potential for coercion, exploitation or duress. (E.2.2.1.8. The potential for pressure, coercion, exploitation, or duress.) All of her immediate family are in the U.S., and the majority of her financial ties are in the U.S. Applicant has been a naturalized U.S. citizen for over fifteen years. She returned to Russia in April 2005 to abjure her Russian citizenship and has had limited visits with her mother, aunt and father-in-law in 1995 and 2002. She provides minimal support to her mother and aunt. She has only visited her sister and family in Israel in 1991, 1994, and 1997. While she has contact with her relatives in Russia and her relatives in Israel, that contact is limited. While her niece serves in the Israeli military, she has limited contact with her. Clearly, she put her interests in the U.S. ahead of her loyalty to her elderly mother when she chose to renounce her Russian citizenship.

Given her long history with her employer since April 2000, it is unlikely that she could be exploited by coercive or non-coercive means by the government in Russia or in Israel in a way that could force Applicant to choose between loyalty to her mother, aunt, father-in-law, her sibling and family and her loyalty to the United States. She stated that should any such attempt be made she would immediately contact the appropriate U.S. authorities. Thus, any risk of either coercive or non-coercive foreign duress or influence on Applicant and/or her immediate family would appear to be slight and clearly manageable. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives.

While clearance decisions are inherently based on numerous facts, and as such are made as a result of a fact-by-fact, case-by-case analysis, it is clear that the Russian applicant in ISCR Case No. 03-04300 had more significant connections to Russia than the Applicant does in this case with Nigeria or Sierra Leone. Clearly, the applicant's

⁴The Appeal Board reversed the Judge's decision to grant a clearance because of the strict requirements of the Money Memorandum (Applicant in ISCR Case No. 03-04300 had not turned in her Russian passport to the Russian government by the close of evidence).

connections to the United States in ISCR Case No. 03-04300 are less than this Applicant's U.S. connections. Here, this Applicant has lived in the United States longer (since 1982) and his children are solely U.S. citizens.⁵

After weighing the evidence of his connections to Nigeria and Sierra Leone and to the United States, and all the facts in this decision, I conclude Applicant has carried his burden of mitigating the foreign influence security concerns.

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"⁶ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, all the evidence in this decision, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is 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 B:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant

Conclusion

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

Mark W. Harvey
Administrative Judge

⁵In ISCR Case No. 03-04300 the applicant's connections to the U.S. are as follows: (1) the applicant's husband and son live in the United States, and they are both dual citizens of Russia and the U.S.; and (2) The applicant has lived in the U.S. since 1989. The applicant in ISCR Case No. 03-04300 is a professional with post-doctorate teaching employment.

⁶See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).