



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



In the matter of:)	
)	
XXXXX, Xxxxx Sxxxxxx)	ISCR Case No. 08-04304
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Francisco J. Mendez, Jr., Esquire, Department Counsel
For Applicant: William F. Savarino, Esquire

April 30, 2009

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 2 December 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B.¹ Applicant answered the SOR 5 December 2008, and requested a hearing. DOHA assigned the case to me 12 February 2009, and I convened a hearing 25 March 2009. DOHA received the transcript (Tr.) 2 April 2009.

¹DOHA acted 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), and the revised adjudicative guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant admitted the SOR allegations, except for SOR 1.d. and 1.f.² He is a 47-year-old senior software engineer employed by a defense contractor since Spring 2008. He has not previously held a clearance, except for an interim clearance he held before this action was brought.

Applicant was born in Nigeria in May 1961. He was raised there and educated there through high school. He immigrated to the U.S. in April 1980 to go to college, having obtained an education visa. He eventually obtained his undergraduate degree in computer science in May 1988, and is currently working on his master's degree in computer security. Along the way, he was able to covert his education visa into a work visa. He became a naturalized U.S. citizen in December 1999. He continued to maintain his Nigerian passport after his naturalization, but surrendered it to his company's facility security officer (FSO) when he became aware of the requirement to do so (G.E. 5). He obtained his U.S. passport in March 2000.

In June 1991, Applicant married a native-born U.S. citizen. They have three children, all born in the U.S. Applicant and his wife own three properties in the U.S. The house he lives in (for the last 13 years) is valued at \$175,000. His two investment properties are worth \$400,000. His current salary is \$102,000. His savings and retirement accounts in the U.S. total \$40,000.

Applicant's mother, four sisters, one half-brother, and two half-sisters are all resident citizens of Nigeria. They live in a small town in the Niger river delta. A third half-sister, a chemical engineer, lives in the U.S. and is a naturalized U.S. citizen. His 75-year-old mother is a retired school teacher, whom Applicant has sponsored for immigration to the U.S. (A.E. B, C). Applicant has twin sisters who are both pharmacists. Another owns a boutique. The last sister is a doctor who is married to a doctor. His half-brother attends a trade school. One half-sister is a cashier for a local college, the second is a pharmaceutical distributor. None of them has any connection to the Nigerian government.

Applicant has returned to Nigeria several times for vacation and family funerals/memorials. He traveled there in 2001, 2002, 2005 (for his father's memorial service), and twice in 2007 (once for a family funeral). He does not expect to return to Nigeria unless his mother dies before she can immigrate to the U.S. As her only son, he is culturally obligated to hold her funeral. To that end, he has a Nigerian bank account containing \$2,000.

Applicant fully disclosed his foreign connections on his May 2007 and July 2007 clearance applications (G.E. 1, 2) and fully discussed them during a December 2007 subject interview (G.E. 6). During his interview, he stated his willingness to renounce his

²Which he denied for technical reasons. He has three half-sisters and one half-brother, not two and two as alleged. He has traveled to Nigeria several times, but not three times in 2007 as alleged.

Nigerian citizenship. When he became aware of the security concerns raised by his possession and use of a Nigerian passport, he surrendered his passport to his facility security officer (FSO) in November 2008 (G.E. 5).

Applicant's supervisor—who hired him—extols his work performance and his handling of classified and company sensitive information, and recommends him for his clearance (A.E. A). Applicant has received company-sponsored security briefings.

Nigeria—a part of the British Empire first as a sphere of British influence in 1885, then as a colony and protectorate in 1914—was granted independence from the United Kingdom in October 1960. Since independence, the government has experienced multiple periods of political unrest, including military takeovers of the government. However, the military has generally ceded power back to civilian government, most recently in May 1999. Although Nigeria has a poor human rights record, it has been a staunch supporter of the U.S. global war on terrorism. Furthermore, since independence Nigerian foreign policy has been characterized by a focus on Africa and adherence to several fundamental principles: African unity and independence; peaceful settlement of disputes; nonalignment and nonintentional interference in the internal affairs of other nations; and regional economic cooperation and development. Nigeria is the largest U.S. trading partner in sub-Saharan Africa, and the U.S. is second only to the United Kingdom in trade with Nigeria. The U.S. is the largest foreign investor in Nigeria. Nigeria is not a known collector of U.S. intelligence or sensitive economic information. Nigeria is not known to target U.S. citizens to obtain protected information. The U.S. Department of State characterizes the foreign relations between the U.S. and Nigeria as excellent.

Nevertheless, violent crime, committed by ordinary criminals as well as by persons in police and military uniforms, can occur throughout the country. Kidnaping for ransom of persons associated with the petroleum sector, including U.S. citizens, remains common in the Niger Delta region. A travel warning issued in January 2007 warns U.S. citizens of the dangers of travel to Nigeria and of further deterioration of the security situation in the Niger Delta region. The travel warning also notes that al Qaida leadership has expressed an interest in overthrowing the Nigeria government.

Although the civilian government since 1999 was characterized by political unrest and corruption, an opposition candidate was elected in May 2007 and power transferred peacefully. The new government has been working on necessary electoral and other reforms.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or

against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.³

Analysis

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.⁴ Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.⁵

In this case, the argument for disqualification under Guideline B is not persuasive. Considering first the foreign country involved, Nigeria and the U.S. enjoy

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴Revised Adjudicative Guidelines, ¶ 6.

⁵Revised Adjudicative Guidelines, ¶ 7.(a).

excellent foreign relations. However, while Nigeria focuses its foreign policy largely in the region, it is actively cooperating with the U.S. in ending global terrorism. Nigeria is not known to target protected U.S. information, nor is it known to target U.S. citizens to obtain protected information. Further, in this case it is not clear what further claim Nigeria might have on Applicant. He has both expressed a willingness to renounce his Nigerian citizenship, and has surrendered his passport to his FSO. The risk that Nigeria might seek protected information from Applicant is low, if not non-existent.

Considering Applicant's situation in relation to the Nigerian government, the government produced no evidence that there was any risk, much less a heightened risk, of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's family contacts in Nigeria. Applicant's travel to Nigeria has no independent security significance given that Nigeria is not known to be targeting U.S. citizens for information. Further, the security significance of travel under most circumstances is demonstrating an applicant's affection for family members, which his trips corroborate and which Applicant does not dispute. But none of his family members is connected to the Nigerian government nor otherwise situated to be exploited for information gathering. There is nothing in the circumstances of their being in Nigeria, or in Applicant's contacts with them, to heighten the risk that he could be impelled to provide protected information to Nigeria.

Applicant's ties to the U.S. are overwhelming. He has resided here for 29 years, and been a citizen for almost ten. His wife and children are U.S. born citizens. His financial interests in the U.S.—nearly \$600,000 in real estate, \$40,000 in savings, and \$102,000 annual salary—dwarf the \$2,000 in a Nigerian bank earmarked for his mother's funeral in the event she dies before he is able to bring her to the U.S. I resolve Guideline B for Applicant.

Formal Findings

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph a: For Applicant
Subparagraph b: For Applicant
Subparagraph c: For Applicant
Subparagraph d: For Applicant
Subparagraph e: For Applicant
Subparagraph f: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge