



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



In the matter of:)
)
 -----¹) ISCR Case No. 08-05668
 SSN: -----)
)
 Applicant for Security Clearance)

Appearances

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

March 24, 2009

Decision

HARVEY, Mark W., Administrative Judge:

Applicant was born in the United States. Applicant, her parents, her husband and her siblings all have connections to Nigeria. However, none of them currently reside in Nigeria and none of them intend to permanently reside in Nigeria. She terminated her access to her Nigerian passport. She has significantly greater contacts with the United States than with Nigeria. She can be expected to resolve any conflict of interest in favor of U.S. interests. Foreign preference and foreign influence security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On August 21, 2006, Applicant submitted a Security Clearance Application (e-QIP version) (hereinafter SF 86) (Government Exhibit (GE) 1). On November 28, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, alleging security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence) (GE 5). 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*

¹Applicant married on November 21, 2008 (Tr. 36). The statement of reasons reflects her maiden name.

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 her, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On December 12, 2008, Applicant responded to the SOR and requested a hearing before an administrative judge (GE 6). Department Counsel was prepared to proceed on February 11, 2009. The case was assigned to me on February 12, 2009. On February 18, 2009, DOHA issued a hearing notice. The hearing was held on March 10, 2009. At the hearing, Department Counsel offered three exhibits (GEs 1-3) (Transcript (Tr.) 22-25), and Applicant offered 13 exhibits (Tr. 27-31; AE A-M). There were no objections, and I admitted GEs 1-2 (Tr. 23, 25), and AEs A-M (Tr. 31). Additionally, I admitted the SOR, response to the SOR and the hearing notice (GEs 4-6). I received the transcript on March 19, 2009.

Procedural Ruling

Department Counsel requested administrative notice of facts concerning the Federal Republic of Nigeria (hereinafter Nigeria) (Tr. 24-25; GE 3). 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 all of the facts in all of the documents (Tr. 25-26; GE 3). See the Nigeria section of the Findings of Fact of this decision, *infra*, for the material facts from Department Counsel's submissions on Nigeria.

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 Fact²

Applicant admitted the SOR allegations in her response to the SOR (GE 5). Her 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.

²The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and her family's privacy. The cited sources contain more specific information.

Applicant was born in the United States (Tr. 15, GE 1). She is 26 years old (Tr. 5). She left the United States and went to Nigeria when she was three years old. She attended most of her grammar and high school in Nigeria. In 1999, she graduated from a high school in Malaysia (Tr. 5, 18; GE 1). Applicant attended college and university in the United States (Tr. 6). She majored in computer science and received her bachelor's degree (Tr. 6). In May 2009, she expects to complete her master's degree in systems engineering at a U.S. university (Tr. 20, 38-39). When Applicant held an interim clearance she scrupulously protected information and documents (Tr. 21). She does not currently hold a security clearance (Tr. 6, 21).

Applicant's father and mother are citizens of Nigeria (GE 6; SOR ¶ 2(a)). Her parents currently reside in a Western European country (GE 6; SOR ¶ 2(a)). Her father is currently a Nigerian government employee, and he has been a Nigerian government employee for more than 26 years (Tr. 32; GE 6; SOR ¶ 2(b)). He is in administration and management and not involved in setting Nigerian policy (Tr. 33). Her parents own a house in Nigeria (Tr. 34). They rent their home to tenants (Tr. 34). Her father intends to retire from his Nigerian government employment in about a year (Tr. 19). Her parents plan to move to the United States (Tr. 20, 34). On February 20, 2008, Applicant filed an immigrant petition on behalf of her parents and they will be applying for permanent U.S. residency (Tr. 20, 34; AE B, C). She frequently communicates with her parents (Tr. 41).

On November 21, 2008, Applicant married a native-born, U.S. citizen (Tr. 20, 36). Her husband served five years on active duty in the U.S. Marines (Tr. 20, 36). After leaving active duty, her husband continued his college education, and moved with Applicant to the East Coast (Tr. 20). A defense contractor is now employing him (Tr. 20, 36-37). He has held a security clearance without a security incident for more than ten years (Tr. 37).

Applicant and her husband do not own any property or bank accounts in Nigeria (Tr. 34, 39). Applicant and her husband have bank accounts in the United States (Tr. 39). Her husband has weekly conversations with his parents, who live in Nigeria (Tr. 39).

Applicant's sister was born in the United States, and her brother was born in Nigeria (Tr. 15). Applicant lived in the United States for three years before her parents, and Applicant returned to Nigeria (Tr. 16). In 1998, Applicant's father was posted to Malaysia and Applicant completed high school in Malaysia (Tr. 17-18). After graduating from high school in 1999, Applicant and her sister moved in with her uncle and attended college in the United States (Tr. 18). Applicant attended college and a university for five years (Tr. 18). During her college years, she tutored children in math, English, and college students in algebra and trigonometry (Tr. 18). She also interned at a government agency and a defense contractor (Tr. 18).

Applicant's brother is currently attending college in the United States and her sister is a PhD candidate at a U.S. university (Tr. 19). Her brother was recently injured in Europe, and he has not returned to the United States (Tr. 35). Her sister went to Europe to take care of her brother (Tr. 35-36).

In December 2008, Applicant went to Nigeria to visit her husband's parents (Tr. 37). She stayed at her husband's parent's home (Tr. 38). She used her U.S. passport to enter Nigeria (Tr. 37). She stayed in Nigeria for three weeks (Tr. 37). Her father-in-law is a retired university professor and her mother-in-law owns a clothing store (Tr. 42).

Applicant provided seven character recommendations (AE D-K), and an Individual Excellence Award from her employer (AE L). Most of the letters are from peers and supervisors at her employment, and one letter is from her roommate (AE J). The letters laud her dedication, responsibility, trustworthiness, professionalism, initiative, initiative, leadership, reliability, integrity, and active involvement in the community.

Foreign preference

Applicant obtained a Nigerian passport on March 28, 2000, and subsequently renewed it causing it to remain valid until March 26, 2010 (GE 6; SOR ¶ 1.a). She used her Nigerian passport to travel to Nigeria in December 2003 and December 2005 (GE 6; SOR ¶ 1.b). She lived in Nigeria from 1985 to 1998 she lived in Nigeria about 13 years (GE 6; SOR ¶ 1.c). On February 24, 2009, Applicant and her facility security officer signed a statement indicating she had destroyed or invalidated her Nigerian passport, and promised not to possess a foreign passport while holding a security clearance (AE A).

Nigeria³

Nigeria is a federal republic that gained independence from Britain in 1960. Nigeria is the most populous country in Africa with a population in 2007 of 148 million. The country's area is about the same as California, Nevada, and Arizona combined. The United States is Nigeria's largest trading partner. Oil imports from Nigeria to the United States account for 11% of U.S. oil imports. The United States is the largest foreign investor in Nigeria, and U.S. investment is mostly in mining and petroleum.

"The [Nigerian] government has lent strong diplomatic support to U.S. Government counter-terrorism efforts in the aftermath of the September 11, 2001, terrorist attacks. . . . An estimated one million Nigerians and Nigerian Americans live study and work in the United States, while over 25,000 Americans live and work in Nigeria."

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

³The facts in the section concerning Nigeria, except for the first two paragraphs, are from Department Counsel's factual summary (GE 3). The first two paragraphs are from the U.S. Department of State, Bureau of African Affairs, Background Note: *Nigeria*, Dec. 2008 (Ex. 3, part. I).

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.

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 or her] 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 Guidelines C (Foreign Preference) and B (Foreign Influence) are the relevant security concerns with respect to the allegations set forth in the SOR.

Foreign Preference

AG ¶ 9 articulates the Government’s 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.” Conditions under AG ¶ 10 that could raise a security concern and may be disqualifying in this case include:

(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;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;

(6) seeking or holding political office in a foreign country; and

(7) voting in a foreign election.

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

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

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

Applicant became a U.S. citizen by virtue of her birth in the United States. Her parents took her to Nigeria, where she was raised, received educational benefits, and exercised other attributes of Nigerian citizenship. She retained a Nigerian passport after immigrating back to the United States in 1999, and used it in 2003 and 2005 to enter Nigeria. Disqualifying conditions under AG ¶¶ 10(a)(1) and 10a(3) apply.

Under AG ¶ 11, conditions that could mitigate 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 exercise of the rights, privileges, or obligations of Nigerian citizenship occurred when Applicant was a minor, except for her possession and use of her Nigerian passport in 2003 and 2005 to enter Nigeria. On February 24, 2009, Applicant and her facility security officer signed a statement indicating she had destroyed or

invalidated her Nigerian passport, and she promised not to possess a foreign passport while holding a security clearance. AG ¶¶ 11(c) and 11(e) apply, and foreign preference security concerns are mitigated.

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;
- (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 the United States and moved to Nigeria when she was three years old. Most of the next 13 years were spent in Nigeria. She graduated from a Malaysian high school in 1999, and immigrated to the United States. She used a Nigerian passport to enter Nigeria in 2003 and 2005. Her parents and brother are citizens of Nigeria, and her father is a Nigerian government official. Her husband’s parents are residents and citizens of Nigeria. She communicates frequently with her parents, and her husband communicates frequently with his parents.

The mere possession of close family ties with a person living in a foreign country or who is a citizen of 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 relationship of Nigeria with the United States, places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that her and her husband's relationship with family members who are citizens of Nigeria or living in Nigeria do not pose a security risk. Applicant's father is a Nigerian government official and as such he is dependent upon the Nigerian government for his salary and possible retirement benefits. Applicant should not be placed into a position where she might be forced to choose between loyalty to the United States and a desire to protect her family members or her husband's family living in a foreign country from harm, pressure or coercion.⁴ With its negative human rights record, and high levels of crime in Nigeria as well as other political, economic and military problems in this country, it is conceivable that anyone living in Nigeria 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 seek classified or economic information from United States' businesses, Applicant's connections to her family living in Nigeria (including her in-laws) create a potential conflict of interest because her relationship is sufficiently close to raise a security concern about her desire to assist relatives living in Nigeria or with Nigerian citizenship by providing sensitive or classified information.

Department Counsel produced substantial evidence of Applicant's contacts with her relatives who are citizens of Nigeria or live in Nigeria 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 about potential application of any mitigating conditions.

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

⁴ 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 numerous recent cases involving U.S. citizens with Iranian connections whose clearances were denied, and citing no recent cases where the Appeal Board affirmed the grant of a clearance for someone with immediate family members living in Iran).

(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) partially applies; however, 8(c), 8(d), and 8(e) do not apply because the U.S. government has not encouraged her involvement with Nigerian citizens, her travel to Nigeria, or other Nigerian connections. Applicant has frequent contact with her parents, and her spouse has frequent contact with his parents, who are living in Nigeria. Additionally, Applicant has gone to Nigeria in 2003, 2005, and for three weeks in 2008. Her contacts with family members (including her in-laws) are sufficiently frequent to raise the possibility of her being forced to choose between the United States and the welfare of her relatives, who are citizens of Nigeria and/or living in Nigeria. She is not able to fully meet her burden of showing there is "little likelihood that [her relationships with her relatives who are Nigerian citizens] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. There is no evidence that her relatives, who are Nigerian citizens and/or living in Nigeria are or have been political activist(s), challenging the policies of the Nigerian governments. Her father is an official in the Nigerian government and has held a Nigerian government position for almost thirty years. There is no evidence that terrorists, criminals, the Nigerian government or her father have approached or threatened Applicant or her Nigerian relatives for classified or sensitive information. As such, there is a reduced possibility that her Nigerian relatives or

Applicant herself 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." She must establish that "[she] can be expected to resolve any conflict of interest in favor of the U.S. interest." Applicant is a native-born, U.S. citizen. She received her post-secondary education in the United States. Her husband is a U.S. citizen, veteran of five years active duty service in the U.S. Marines, and 10-year security clearance holder. Applicant and her husband reside in the United States. Her siblings are U.S. residents. Her sister is a native-born U.S. citizen. Her parents intend to become permanent residents of the United States. She has a bank account in the United States, and does not own property or have a bank account in Nigeria. Her primary connections to Nigeria are her in-laws who live in Nigeria and her parents, who are Nigerian citizens living in Europe, as part of her father's Nigerian government employment.

AG ¶ 8(f) partially applies because Applicant has no interest in property or bank accounts in Nigeria. This mitigating condition can only mitigate AG ¶ 7(e), which provides, "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation."

In sum, Applicant's connections to Nigeria are much less significant than her connections to the United States. Her connections to the United States 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 Guidelines C and 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 and C decision concerning Nigeria must take into consideration the geopolitical situation in Nigeria, as well as the dangers existing in Nigeria.⁵ 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. Nigeria and the United States are closely related. Nigeria is the most populous country in Africa and about one million Nigerians live in the United States. The United States is Nigeria's largest trading partner.

Applicant traveled to Nigeria in 2003 and 2005 using a Nigerian passport, and in 2008 she went to Nigeria and stayed for three weeks with her in-laws, who are citizens and residents of Nigeria. She frequently communicates with her Nigerian parents, who are currently living in Europe. Her father is an official in the Nigerian government. Her ties to her father, mother, siblings, and in-laws are limited to telephone calls and visits. Her communications establish ties of affection to her Nigerian family members. Her husband frequently communicates to his parents who are Nigerian citizens and reside in Nigeria. There is some possibility that Applicant or her husband 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 has a significant lawless element, who may attempt to harm or pressure Applicant's relatives to gain some kind of advantage over Applicant.

The circumstances militating towards approval of a clearance are more significant. Applicant was born in the United States. She left Nigeria in 1999, just after graduating from a Malaysian high school. She has earned a bachelor's degree at a U.S. university and is close to completing a master's degree at a U.S. university. In February 2008, she filed documentation so that her parents can become U.S. permanent residents. Her father plans to retire from Nigerian government service in about a year, and then her parents will be able to permanently move to the United States. Most importantly, her husband is a U.S. citizen and five-year active-duty veteran of the U.S. Marines. He has been a security clearance holder for ten years and the U.S. government trusts him with classified information. Her sister is a U.S. citizen, and both of her siblings are U.S. residents, who are attending post-secondary schools in the United States. She and her facility security officer documented the termination of her access to her Nigerian passport. Applicant provided seven character recommendations and an Individual Excellence Award from her employer. Her character references and work performance award evidence her dedication, responsibility, trustworthiness, professionalism, reliability, integrity, and active involvement in her community. Although the possibility of attempted exploitation of Applicant is relatively low, Applicant's strong connections to the United States and especially to her U.S. family, community and employment establish "such deep and longstanding relationships and loyalties in the

⁵ 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).

U.S., [she] can be expected to resolve any conflict of interest in favor of the U.S. interest.”

After weighing the evidence of her connections to Nigeria and to the United States, and all the facts in this decision, I conclude Applicant has carried her burden of mitigating the foreign preference and 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 she 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 C:	FOR APPLICANT
Subparagraphs 1.a to 1.c:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a to 2.c:	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

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