



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



In the matter of:)
)
-----) ISCR Case No. 08-09052
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

November 9, 2009

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is a naturalized United States citizen, whose mother, three of his siblings, and his mother-in-law are resident citizens of his native Nigeria. Foreign influence concerns raised by these close family ties to Nigeria are mitigated by his strong ties to the U.S., developed since 1980. Financial concerns raised by delinquent debt totaling about \$92,500 are not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on January 23, 2008. On March 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline B and Guideline F that provided the basis for its preliminary decision to deny him a security clearance and to refer the matter to an administrative judge. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

Program (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) effective within the Department of Defense as of September 1, 2006.

Applicant acknowledged receipt of the SOR on April 3, 2009. On April 10, 2009, he answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on May 15, 2009, to decide whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On May 21, 2009, the government moved for administrative notice of certain facts pertinent to Nigeria and its foreign relations, including with the United States, *infra*. On June 2, 2009, I scheduled a hearing for July 1, 2009.

At the hearing seven government exhibits (Ex. 1-7) and 22 Applicant exhibits (Ex. A-V) were admitted without any objections.¹ Applicant and four witnesses testified, as reflected in a transcript (Tr.) received on July 10, 2009.

Procedural and Evidentiary Rulings

Request for Administrative Notice

On May 21, 2009, Department Counsel requested administrative notice be taken of certain facts relating to the Federal Republic of Nigeria (Nigeria) and its foreign relations, including with the U.S. The request was based on publications from the Department of State,² the Congressional Research Service,³ and the U.S. Embassy in Nigeria.⁴ The government's formal request and the attached documents were not admitted into evidence but were included in the record. At the hearing on July 1, 2009, Applicant filed no objections to my taking administrative notice of the facts set forth in the government's motion. Accordingly, I agreed to review the source documents and to take administrative notice of particular facts pertaining to Nigeria in determining Applicant's current security eligibility, as set forth in the Findings of Fact.

Findings of Fact

DOHA alleged under Guideline B, foreign influence, that Applicant's mother (SOR 1.a), one brother and two sisters (SOR 1.b), and his mother-in-law (SOR 1.c) are

¹A second copy of the character reference letter admitted as Exhibit B was forwarded by its author to DOHA. The parties were notified of my receipt of the document at the hearing, and since it was cumulative of Exhibit B, it was placed in the correspondence file.

²The State Department publications are as follows: *Background Note: Nigeria*, dated April 2009; *Nigeria, Country Specific Information*, dated April 21, 2009; *2008 Human Rights Report: Nigeria*, dated February 25, 2009; and *Travel Warning, Nigeria*, dated December 2, 2008.

³*CRS Report for Congress, Nigeria: Current Issues*, updated January 30, 2008.

⁴The U.S. Embassy publications consist of Warden Messages issued jointly by the U.S. Embassy Abuja and the U.S. Consulate General Lagos on March 16, 2009, and April 3, 2009.

resident citizens of Nigeria. Under Guideline F, financial considerations, Applicant was alleged to owe nine delinquent debts totalling \$93,048 (SOR 2.a-2.i). Applicant denied the allegations. After considering the pleadings, exhibit, transcript, and the facts pertaining to Nigeria for administrative notice, I make the following findings of fact.

Personal Background

Applicant is a 55-year-old senior engineer, who has worked for his current employer, a defense contractor, since November 1997. He seeks to retain a secret-level security clearance that was granted to him for his duties in about February 1998 (Ex. 1).

Applicant was born and raised in Nigeria (Exs. 1, 3). At age 18, he went to work for a U.S. oil company as a machine operator (Ex. 3). After studying in Europe and then in Canada, he came to the U.S. on a visitor visa in the spring of 1980. In June 1980, while working as a machinist in the U.S., he began part-time college study (Ex. 3). The following month, he married his first wife, who had emigrated from Nigeria to the U.S. in 1979 (Ex. 3). Two children were born to them in the U.S., in June 1981 and in November 1984 (Exs. 1, 3).

Applicant was awarded an associate's degree in mechanical engineering in May 1985, and a bachelor of science in manufacturing and industrial engineering in May 1986. He remained in the U.S. to pursue his career as an engineer. Starting in August 1986, he worked over the years for a succession of commercial manufacturing companies, holding various positions of responsibility for task time and cost analysis, production processes, and workstation improvements and layouts (Ex. A). While employed as a senior industrial engineer for a mine safety appliance company, Applicant began graduate studies in manufacturing engineering in September 1991 (Exs. 1, 2, A). In about January 1993, he was laid off from his job, and he relied on unemployment compensation until March 1994, when he began working as an engineer for a cable corporation. In May 1994, he was awarded his master of science degree (Exs. 1, 2, 3, A).

In December 1993, Applicant and his first wife divorced. Applicant began a relationship with a Nigerian citizen who was in the U.S. on a tourist visa. They would eventually marry in May 1997, after they had two children together. A third child was born to them in October 2000 (Exs. 1, 3).

Applicant lost his job due to a corporate reorganization in May 1997, and he was unemployed until he commenced his defense contractor employment in November 1997 (Ex. 2). Before his start date, he executed a Questionnaire for National Security Positions (SF 86) on October 21, 1997, for a secret-level security clearance (Ex. 2). He was issued his clearance in about February 1998 (Ex. 1), having informed the Department of Defense of family ties to Nigeria and of pleasure travel to Nigeria from December 1995 to January 1996, which was on a Nigerian passport last renewed in December 1992 (Ex. 2).

In addition to maintaining his full-time employment with the defense contractor, Applicant was a part-time adjunct instructor in industrial and mechanical engineering, and in mathematics, from January 1998 to June 2002 for the university at which he had earned his bachelor's degree. In about October 2003, Applicant assumed the responsibilities of an engineering/planning specialist and task manager for the defense contractor (Exs. A, F). Applicant showed a willingness to take on new challenges on the job. He transitioned smoothly into production control duties over the March 2006 to March 2007 rating period, and was rated as exceeding job requirements (Ex. E).

In March 2007, Applicant became a senior engineer responsible for developing cost estimates, determining task schedules, and managing program tasks to completion for two classes of submarines. He met his job requirements for the rating periods March 2007 to February 2008 (Ex. D) and March 2008 through February 2009 (Ex. C).

In July 2008, Applicant was accepted into a doctoral program in industrial and manufacturing engineering at the state university (Exs. 3, G). He began his doctorate studies while continuing to work for the defense contractor, although he dropped out of the program after the SOR was issued.

Applicant has been an advocate for Nigerian and other immigrant communities in his area (Tr. 71). He previously served on the board of a now closed community credit union he co-founded to assist immigrant populations under served by other financial institutions (Tr. 100). A state senator with a prominent position in his state's legislature, who had served on the credit union board with him and who witnessed Applicant's involvement at community fairs, especially involving health care issues, found Applicant to be committed, efficient, and honest (Ex. H, Tr. 71-73). Applicant mentioned to him "a couple months ago" that he had lost a rental property to foreclosure (Tr. 77-78, 82). This senator has no reservations about recommending Applicant for a security clearance (Tr. 74), given what he knows of Applicant's involvement in the community and Applicant's friends.

At least 21 of Applicant's coworkers also endorse continuation of his eligibility for a secret clearance (Ex. J). A task manager in the program office, who has worked closely with Applicant for several years, is aware that Applicant has some financial problems but he believes "[Applicant] is an honest and trustworthy man with a good heart and would never knowingly do anything illegal concerning classified information." (Ex. V). Another coworker of Applicant's, who has worked closely with him over the past two and one-half years, has observed Applicant to be very dedicated to his work, as someone who follows through on tasks in a timely manner (Tr. 60). In April 2009, Applicant made him aware generally of some credit issues (Tr. 66). He knows Applicant is from Nigeria, and does not consider Applicant to be a risk to security (Tr. 60-63, 67).

Applicant has maintained a relationship with a former professor from the early 1980s. Applicant has sought his advice over the years concerning academic studies, and they had discussed forming an industrial engineering consulting firm in the past. This professor found Applicant to be an outstanding student and "a person of the

highest integrity.” He understands Applicant has had some credit problems and family in Nigeria, but he is unaware of the extent of the financial issues or of Applicant’s contacts with his foreign family members (Tr. 38-41).

A close friend of Applicant’s, who shares his ethnic heritage, met him at school in the U.S. They are members of the same social club. He has known Applicant to be a hard worker (Tr. 47-49, 54). In early 2009, Applicant informed him generally that he had some debts and a repayment plan (Tr. 52-53). This friend met Applicant’s mother when she stayed with Applicant in the U.S., which he recalled as “a couple of years ago.” (Tr. 50-51).

Financial

With limited exception, Applicant had a history of timely payments on his financial obligations before 2006. In November 2003, a medical creditor was awarded a judgment of \$490 against Applicant (SOR 2.a), which he paid in May 2004 (Ex. 7). In July 2004, Applicant and his spouse bought a new home, taking on a joint mortgage debt of \$313,500 (Ex. 7, Tr. 90). They decided to keep their previous home (a large, one-family house) as a rental property (Ex. 3, Tr. 92, 94), and in September 2004, they refinanced the mortgage on that house, paying off their old loan of \$160,000 with a new mortgage of \$172,000. They also took out an unsecured loan of \$43,000 on the property (SOR 2.h) (Exs. 3, 7).⁵ Applicant and his spouse, a nurse (Tr. 116-17), counted on the rental income to cover the loans (Ex. 3), although he also had to contribute about \$400 of the \$2,100 monthly mortgage payment (Tr. 183-84).

In 2005, the tenants stopped paying their rent (Ex. 3, Tr. 93), and Applicant covered the mortgage for the rental property as well as his current residence (Tr. 180). Efforts to sell the rental property were not successful. Due to a decrease in his wage earnings for 2006 (\$59,468) from 2005 (\$76,329) (Ex. S), and with his spouse willing to contribute only about 10% to 15% to the household expenses (Tr. 116-17), Applicant could not keep up his payments on all their financial obligations. He continued to pay the mortgage on his new home and his car note⁶ on time, but he stopped paying the loans taken out for the rental property after June 2006. Foreclosure proceedings were initiated by the mortgagee of the rental property. The foreclosure was redeemed, leaving Applicant with no liability for the first mortgage. But as of December 2007, he

⁵Applicant told a government investigator that he had a second mortgage on his former residence of \$27,000 (Ex. 3). His February 2008 credit report lists the debt in SOR 2.b as a charged off line of credit opened in January 2006 for \$27,447 (SOR 2.b) (Ex. 7). Applicant testified on direct examination that the debt in SOR 2.b was a loan for repairs to the rental property (Tr. 98). Yet, on cross examination, he indicated the creditor in SOR 2.b held the second mortgage (Tr. 111). He indicated that the mortgage was for siding for the rental property (Tr. 136), and that the loan in SOR 2.h was to change the roof on the house (Tr. 136). Neither SOR 2.b or 2.h is listed as a mortgage debt on his credit reports.

⁶Applicant took out an automobile loan in February 2006 for \$36,073. Through timely payments of \$632 per month (Ex. 3), he had reduced the loan balance to \$26,301 as of January 2008 (Ex. 7).

was past due \$8,104 on a balance of \$49,369 on an installment loan (SOR 2.h) taken out for a new roof for the premises (Tr. 136) (Ex. 7).

Despite annual wages of \$60,472 in 2007 (Ex. S), a \$24,144 line of credit (SOR 2.b) was \$3,734 past due as of October 2007 and in collection. His Discover card account, used to furnish his current home (Tr. 113-14), was placed for collection when it became 150 days past due. As of January 2008, the balance was \$6,190 (SOR 2.c). Another credit card was charged off in the amount of \$3,728 and referred for collection in August 2007 due to nonpayment since December 2006 (SOR 2.d). An unpaid balance of \$355 on a retail charge account was 150 days past due as of August 2007 (SOR 2.e). Another charge account with a home improvement retailer fell behind \$508 and was closed as of January 2008 (SOR 2.f). A telephone provider for services at his new home placed a \$564 balance for collection (SOR 2.g). A credit card account for gasoline was cancelled by the creditor (SOR 2.i) due to nonpayment. As of May 2007, he owed \$1,664 on the account (Ex. 7). In January 2008, a home improvement loan was charged off in the amount of \$5,494 and placed for collection (not alleged) (Exs. 3, 7).

On January 23, 2008, Applicant completed an e-QIP for a periodic reinvestigation of his security clearance. He disclosed the foreclosure of the primary mortgage on his rental property, but only one previously delinquent credit card debt of \$3,200 that had been satisfied in 2007 (not alleged) (Ex. 1). Evidence suggests he was aware of at least the debt in SOR 2.b, as he testified that he contacted the lender in February or March 2008 and expressed his difficulty in making his payments. The lender wanted payments of almost \$500 per month, which he could not afford (Tr. 111-12).

On May 13, 2008, Applicant was interviewed by a government investigator, in part about his delinquent debts. Applicant attributed his delinquent debt to having to pay the mortgage costs for his present residence as well as the rental property. He acknowledged that the rental property had been foreclosed. He had no contact with the mortgage lender after the house was sold in February 2008, and "hoped" that the proceeds from the sale had satisfied the loans in 2.b and 2.h. He indicated he would work out a repayment plan for his delinquent home improvement loan (not alleged) with the credit union. Applicant was uncertain whether he had in fact satisfied the credit card debt that he disclosed on his e-QIP.⁷ He disputed the reported delinquencies in SOR 2.e, 2.f, and 2.g, but acknowledged unpaid debt (balances unknown) to the creditors in SOR 2.c and 2.i. He was unable to confirm or deny the debts in SOR 2.a and 2.d. Applicant volunteered that he was in arrears about \$507 for electricity and about \$800 for natural gas for his present residence. He was paying only the current monthly charges on both accounts and nothing toward the arrearage. Applicant estimated he had \$5,220 in joint net income available for \$5,999 in expenses (including \$3,443 for their mortgage) since his spouse was contributing only about \$1,720 of her \$4,000 net salary to the household. Applicant expressed a desire to obtain credit counseling for

⁷Available credit reports (Exs. 5, 6, 7, U) do not reflect a delinquent balance on an account with that creditor.

assistance in working out a budget that would permit him to live within his means (Ex. 3).

In July 2008, Applicant contracted with a debt management company to act as his agent in negotiating settlements with his creditors, and he made an initial payment of \$375.37 by debit on July 21, 2008 (Ex. O). Applicant was to pay \$385 per month for 48 months to resolve debt totalling \$48,718.05, which included the debts in SOR 2.b-2.e, 2.g, and 2.i and the credit union loan that was not alleged (Exs. 3, L, M, O, Tr. 98).⁸ Applicant did not include the debt in SOR 2.h in the plan because it had been charged off (Tr. 98).

In September 2008, Applicant and his spouse refinanced the mortgage on their primary residence, taking out a new loan of \$402,447. They paid off his loan with the credit union (not alleged) through the refinancing (Ex. 3, Tr. 91-92), and the debt was removed from the debt repayment plan (Exs. 3, P).

As of January 2009, his creditors were reporting the debt balances in SOR 2.b-2.i, for a total of \$92,558 in delinquent debt.⁹ (Ex. 5). He testified that the creditor in SOR 2.b was willing to settle for about \$19,000 (Tr. 99), but did not document any settlement offer. As of July 1, 2009, none of his debts had yet been paid by the debt resolution firm (Tr. 123). The company had taken its fees upfront from the funds he had paid since July 2008. Based on the last statement he received, Applicant understood that his fees had been paid in full and that all future funds would be going to his debts (Tr. 118-19). Applicant intends to pay off some of his smaller debts himself and have them removed from the plan when he has the extra money to do so (Tr. 122). He plans to add the delinquent loan in SOR 2.h to the plan in the future if necessary (Tr. 141).

Applicant paid his car loan on time, and the balance was down to \$19,569 (Ex. U). In April 2009, Applicant participated in three hours of internet and telephone credit counseling with a certified credit counselor (Ex. K, Tr. 151). Around that same time, Applicant estimated his net worth to be about \$35,238, although his mortgage obligation exceeded the market value of his home by about \$40,400 (Ex. N, Tr. 143). He was current in his mortgage payments (Tr. 143-44).

As of the end of December 2008, Applicant's stock and savings investment account at work had a balance of \$65,188.94. Over the next six months, it lost 20.8% of its value and the balance was down to \$46,477.13 (Ex. R). As of late March 2009, Applicant had \$12,600 in student loan funds on deposit set aside for his doctoral studies (Ex. Q, Tr. 148-49). He had enrolled in the doctoral program but dropped out when he

⁸Applicant provided only his initial statement of account activity (Ex. O) showing the \$375.37 payment on July 21, 2008. He annotated his statement to indicate that the amount had been deducted from his account since July 2008. The statement of account from the debt management company indicates he was to pay \$385 each month under the plan. Neither party inquired about the discrepancy at the hearing.

⁹Equifax reported the \$490 medical judgment in SOR 2.a, without indicating whether it had been paid (Ex. 5). Other credit reports in the record (Exs. 7, U) clearly indicate it had been paid.

received the SOR (Tr. 149). He has no active credit card accounts and relies on his debit card for purchases (Tr. 93).

Foreign Connections

Applicant was raised with his siblings (three brothers and two sisters) in Nigeria, where their parents were farmers (Ex. 3). In April 1978, he left Nigeria to study in Europe, and then in Canada, eventually coming to the U.S. on a tourist visa in March or April 1980. After more than ten years of U.S. permanent residency, Applicant became a naturalized U.S. citizen in February 1996. He was issued his first U.S. passport in March 1996 (Exs. 2, 3). His spouse became a naturalized U.S. citizen in February 2005 (Exs. 1, 3).

On his initial application for a security clearance executed on October 21, 1997, Applicant indicated that he possessed dual citizenship with Nigeria and the U.S. He disclosed the Nigerian residency and citizenship of his mother, one brother, two sisters, and parents-in-law. His father was deceased. His other brother was a dual citizen of the U.S. and Nigeria living in the U.S. Applicant also reported that he had a 19-year-old cousin with Nigerian citizenship living with him. Applicant also indicated that he had possession of a Nigerian passport valid to December 1997, and that he had travelled to Nigeria for pleasure from December 1995 to January 1996 (Ex. 2).

On December 2, 1997, Applicant was interviewed about his foreign ties. He expressed his intent to renew his Nigerian passport, but that travel to Nigeria to see his relatives would be on his U.S. passport. He added that he owned two undeveloped lots in his hometown in Nigeria at his mother's request. Applicant denied ever voting in a Nigerian election or being employed by the Nigerian government. After more than 10 years as a U.S. permanent resident, he acquired U.S. citizenship "after thinking deeply due to the situation of the Nigerian country" (Ex. 4).¹⁰ He was granted his security clearance.

On his January 23, 2008, e-QIP for renewal of his clearance, Applicant denied he held dual citizenship, or that he had held a foreign passport in the last seven years. He listed one trip to Nigeria, for three weeks from December 2003 to January 2004. Applicant reported his spouse was solely a citizen of the U.S. since her naturalization in 2005 (Ex. 1).

During his interview with a government investigator on May 13, 2008, Applicant asserted that on receipt of his first U.S. passport, his Nigerian passport was stamped cancelled and mailed to the Nigerian Consulate. He expressed a belief that he was no longer a Nigerian citizen based on the cancellation of his foreign passport, and he

¹⁰The government alleged no foreign preference concerns related to Applicant's possession of a foreign passport or ownership of land in Nigeria. These connections are relevant to assessing the risk of foreign influence. His ties to Nigeria must be weighed in determining whether there is a conflict of interest under AG ¶ 8(b).

denied any attempt thereafter to renew his Nigerian passport. Concerning his relatives in Nigeria, Applicant volunteered that one brother lived with their mother in Nigeria, and he owned a bicycle parts store. His two sisters in Nigeria were married to farmers. None of his Nigeria relatives knew that he worked for a defense contractor or that he had a clearance. Applicant contacted his mother two times a month and his siblings in Nigeria three times a year. He indicated he sent his mother about \$800 per year as needed, but provided no support for his siblings. Another brother immigrated to the U.S. in 1983 and became a naturalized U.S. citizen in 1995. Concerning his in-laws, his mother-in-law had been a food vendor on the streets of Nigeria before she retired, and she was receiving about \$600 to \$800 annually in monetary support from Applicant's spouse. His father-in-law, who died in March 2007, had been a magazine printer in Nigeria. Applicant volunteered that his spouse was visiting her mother in Nigeria to attend the funeral of a grandparent, and that she intended to stay about three weeks. Applicant denied "any past or present financial obligations, investments, anticipated inheritance, or ownership of any property outside the U.S." He disclosed trips of three weeks in duration to visit family in Nigeria, from December 1998 to January 1999, in January 2001, and December 2003 to January 2004 (Ex. 3).

Applicant testified that his mother visited him in the U.S. only once, about 18 years ago when she stayed for three years (Tr. 159-60). His close friend testified that he met Applicant's mother, when she was in the U.S. for about a year, "a couple of years ago." (Tr. 51-52). Applicant maintains his friend was incorrect (Tr. 160). Applicant's trips to Nigeria have been to visit his mother. He has not been to Nigeria since the trip in December 2003 (Tr. 64, 87, 154). Applicant stayed with his mother when he was in Nigeria in 1998, 2001, and 2003. He denies that he visited with any of his siblings (Tr. 154-55, 157-58). He took his three sons with him on the trip in 2003 (Tr. 155). As of July 2009, Applicant was sending his mother between \$50 and \$75 twice a year (Tr. 161) and his brother was contributing the remainder of the \$800 she was receiving from her sons in the U.S. (Tr. 161). Applicant testified he telephones his mother now about once a year (Tr. 168), and that he had more frequent contact (once every three months) until as recently as a couple of years ago (Tr. 168-69). When confronted with the discrepancy between these reported contacts and what he told the investigator in May 2008 (twice monthly contact with his mother), he responded that he changed his "style" on how he contacted his mother because of what he is going through (Tr. 171-72). He last talked to his mother in December 2008 (Tr. 169).

Applicant's 52-year-old brother and his two sisters (ages 45 and 42) have remained resident citizens of Nigeria. None of his siblings has been employed by the Nigerian government or served in the Nigerian military (Tr. 87). They have not visited him in the U.S. (Tr. 160). He speaks with his siblings if they happen to be at his mother's home when he calls her (Tr. 168). He denies any contact with his siblings in Nigeria since February 2008 (Tr. 169). As of July 2009, Applicant was not sending any financial support to his siblings in Nigeria (Tr. 88, 161). Applicant sold the undeveloped real estate that he had owned in Nigeria almost ten years ago. He does not currently own any land in Nigeria (Tr. 145).

As of July 2009, Applicant's mother-in-law was a Nigerian resident citizen. She had never worked for the Nigerian government or its military (Tr. 89). His contacts with his mother-in-law are limited to about twice yearly brief greetings if he is present when his spouse calls her (Tr. 89). He claims to not now know whether his spouse is sending her mother financial assistance, or if so, the amount, since they maintain separate bank accounts (Tr. 165-66). His spouse visits her mother in Nigeria about once every four years. He testified her last trip to Nigeria was three or four years ago (Tr. 173).

Nigeria is the most populous nation in Africa. Despite its oil wealth, the country remains highly underdeveloped and mired in poverty. An ethnically diverse country, Nigeria has experienced periods of political instability, with conflict along ethnic and geographic lines and dominated by military coups, since gaining its independence from Britain in October 1960. After 16 years of consecutive military rule, Nigeria transitioned in May 1999 to a civilian, democratic form of government, led by President Olusegun Obasanjo, who oversaw a marked improvement in human rights and democratic practices. In October 2001, then President Obasanjo formed a National Security Commission to address the issue of communal violence. In May 2006, an attempt to amend the Constitution to allow a third presidential term for Obasanjo was soundly defeated in a democratic and relatively peaceful process. Subsequent national and state elections in 2007 were seriously flawed with credible reports of malfeasance and vote rigging, and marked by violence. In May 2007, a moderate respected state governor, Umaru Yar'Adua, assumed the presidency of Nigeria, vowing peace and security in the Niger Delta and reform of the oil and gas industry as among his top priorities.

In 2008, the government's human rights record remained poor. Corruption was "massive, widespread, and pervasive, at all levels of government and society." Government officials at all levels continued to commit serious abuses in several aspects (limits on citizens' right to change their government, extrajudicial killings, and excessive force by security forces acting with impunity, police mistreatment of civilians to extort money, torture of detainees, arbitrary arrest and pretrial detention, harsh and life-threatening prison conditions, executive influence on the judiciary and judicial corruption, arbitrary interference with privacy, restrictions on some civil liberties, including freedom of speech and the press. Other rights, such as freedom of association and religion, were generally respected. Laws prohibiting discrimination, societal abuses, and trafficking in persons, were not effectively enforced.

Nigeria remains relatively stable, although it continues to experience localized civil unrest and communal (inter ethnic) violence. In the oil-producing region of the Niger River Delta, resident U.S. citizens and other foreigners have frequently been threatened and held hostage during labor disputes. Due to the continued risks of kidnapping, robbery, and other armed attacks in the region, and of violent crime throughout the country, the U.S. State Department in December 2008 warned U.S. citizens of the risks of travel to and within Nigeria, and recommended avoiding all but essential travel to the Niger Delta States of Bayelsa, Delta, and Rivers. As a result of recent incidents of violence in the city of Jos, the U.S. diplomatic mission in March 2009 limited travel to

that area to official travel only. In April 2009, American citizens were warned of a possible attack against diplomatic missions in Lagos. Nigerian police or other law enforcement officials do not always immediately inform the U.S. Embassy or Consulate of the arrest or detention of a U.S. citizen.

Since it gained independence, Nigerian foreign policy has been focused on Africa and the goals of African unity and independence, peaceful settlement of disputes, nonalignment, non-intentional interference in the internal affairs of other nations, and regional economic cooperation and development. Over the past decade, Nigeria has played a pivotal role in support of peace in Africa, providing the bulk of the troops for UN peacekeeping efforts in the region.

The U.S.-Nigerian bilateral relationship has continued to improve since the inauguration of the first Obasanjo government and the restoration of basic democracy in 1999. Nigeria is the U.S.' largest trading partner in sub-Saharan Africa, due to the high level of petroleum imports from Nigeria. Nigeria lent strong diplomatic support to U.S. counterterrorism efforts in the aftermath of the September 11, 2001, terrorist attacks, condemning the attacks and supporting military action against the Taliban and Al-Qaida. Nigeria has been a leader in forging an antiterrorism consensus among states in Sub-Saharan Africa. Nigeria is a member of several international organizations, including the United Nations and the Organization of the Petroleum Exporting Countries (OPEC).

ANALYSIS

Guideline B—Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties, or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government 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 to 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 ¶ 6.

It is undisputed that Applicant has foreign connections that present a potential risk of divided loyalties. Applicant's mother, three of his four siblings, and his mother-in-law, are resident citizens of Nigeria.¹¹ The salient issue is whether these foreign contacts present a heightened risk. See AG ¶ 7(a) (stating, "contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of

¹¹The DOHA Appeal Board has held it reasonable for the administrative judge to consider the significance not only of an applicant's ties, but also of his spouse's ties to a foreign country, and the possible effect they may have on Applicant's contacts under Guideline B. See ISCR Case No. 01-02452 (App. Bd. Nov. 21, 2002).

or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion.”); AG ¶ 7(d) (stating, “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.”). The nature and strength of the family ties, the country involved, and the occupations, activities, and/or associations of the foreign family members are all relevant in assessing whether there is a heightened risk.

By virtue of their Nigerian residency and citizenship, these family members are subject to the laws of Nigeria and are within the physical reach of the Nigerian authorities. Likely concerns for his present employment have led him to downplay the significance of his understandably close familial ties to Nigeria. Applicant testified that he communicates with his mother about once a year. He commented, “To tell you the truth, right now, not that often, unless she calls just to say hello to my wife, and she says, oh, is your husband there? And if I am there I say hi mom, and that’s it.” (Tr. 89). He denied any contact with his siblings since February 2008 (Tr. 169). But Applicant told a government investigator in May 2008 that he called his mother about twice a month and he spoke to one or more of his siblings in Nigeria about three times a year. Even assuming he reduced the frequency of his contacts because of concerns over his clearance, it is difficult to believe his contact with his mother is only once a year and only when his mother calls his home. It is evident he feels some affection and familial obligation for his mother. In addition to some minor financial support, he travelled to Nigeria to see her in 1995, 1998, 2001, and 2003. A close friend of Applicant’s testified that he met Applicant’s mother when she was staying with Applicant in the U.S. for about a year “a couple of years ago” (Tr. 51). Applicant submits that his friend was mistaken about the recency of his mother’s stay in the U.S., which occurred almost 18 years ago (Tr. 87). Whether her stay was recent or in the distant past, it is further evidence of their close relationship. AG ¶ 7(a) applies primarily because of Applicant’s relationship with his mother. While Applicant does not have the same level of contact with, or affection for, his siblings, there is a heightened risk because of his siblings’ relationships to their mother, especially his brother who lives with their mother.

AG ¶ 7(d) also applies because of the bond Applicant’s spouse has with her mother. Applicant testified that he does not speak with his mother-in-law often, and there is no evidence to the contrary. Applicant was unable or unwilling to testify at his hearing about the frequency of his spouse’s contacts with her mother. He indicated that his spouse travelled to Nigeria to see her mother about once every four years, and that her last trip, to his knowledge, was “about three or four years ago” (Tr. 173). Yet, he had told a government investigator in May 2008 that his spouse was in Nigeria as they spoke, to attend a family funeral and to visit her mother. Moreover, he also indicated that his spouse provided between \$600 and \$800 per year to her mother. There is no evidence that those ties have diminished.

At the same time, the nature and extent of Applicant’s and his spouse’s ties to their Nigerian relatives as described by Applicant in May 2008 are what one might reasonably expect of any immigrants with parents or siblings living in a distant country.

There is nothing about his siblings' employments that heighten the risk of undue foreign influence. His mother had been a farmer and produce vendor before she retired. Similarly, his mother-in-law sold food on the streets but is now retired as well. His brother owns a bicycle parts shop, and his sisters are street vendors. His sisters' spouses are both farmers. None have been employed by the Nigerian government or served in the Nigerian military. Furthermore, given the friendly relations between Nigeria and the U.S. since Nigeria's transition to civilian rule in 1999, Applicant is not likely to find himself in a position of having to choose between the interests of his siblings in Nigeria and the U.S. See ¶ 8(a) (stating, "the nature of the relationships with the 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."). Despite some ongoing human rights abuses and persistent ethnic conflicts in some regions, Nigeria is not known to target U.S. citizens to obtain protected information or to sponsor terrorism. To the contrary, Nigeria lent strong diplomatic support to U.S. counterterrorism efforts in the aftermath of the September 11, 2001, terrorist attacks, condemning the attacks and supporting military action against the Taliban and Al-Qaida. Nigeria has also been a leader in forging an antiterrorism consensus among states in Sub-Saharan Africa. The U.S. is a significant trading partner, and Nigeria is not likely to jeopardize these interests by pressuring its law-abiding citizens. AG ¶ 8(a) applies.

In the event that Applicant found himself in a position of being forced to choose between the interests of his family members in Nigeria and the interests of the U.S., Applicant has persuaded me that he can be expected to resolve those interests in favor of the U.S. where he and his spouse have chosen to pursue their careers as an engineer and a nurse and raise their children. Applicant had been in the U.S. about 16 years before he became a U.S. citizen, but he also has a record of contributions to the U.S. defense effort through his present employment since 1997.

Applicant and his spouse's financial assets (home, savings, retirement assets, job income) are all in the U.S. He had owned two plots of land in Nigeria, but they were apparently sold almost ten years ago. Applicant does not intend to return to Nigeria permanently, as evidenced by his surrender of his Nigerian passport and acquisition of U.S. citizenship. He has a record of considerable community involvement in the U.S. His children are U.S. native resident citizens. Applicant satisfies AG ¶ 8(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."

Guideline F—Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

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.

Applicant, who had been covering about \$400 of the \$2,100 monthly mortgage payment on his old home, began to have financial problems after his tenants stopped paying any rent in 2005. By mid-2006, he had exhausted his savings and allowed the house to be foreclosed. In 2006/07, he stopped paying on three sizeable installment loans (SOR 2.b and 2.h, and a credit union loan not alleged) and on some revolving charge accounts. After the lender redeemed the property, Applicant had no liability for the primary mortgage, but he still owed delinquent debt of approximately \$98,000 (including the credit union loan). Security concerns are raised by an "inability or unwillingness to satisfy debts," and by "a history of not meeting financial obligations." See AG ¶¶ 19(a) and 19(c).

Moreover, AG ¶ 19(e), "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis," is also implicated. Applicant has a history of significant reliance on consumer credit. He took on a \$36,073 car loan in February 2006 when he was struggling to make the mortgage payments for his rental property. As of May 2008, he was about \$1,300 behind in his utility payments (gas and electricity) on his current residence, and his monthly expenses exceeded his income by about \$779. He satisfied the credit union loan in September 2008 through a refinancing of his home mortgage, but he increased his overall debt in the process. While he apparently has been paying his mortgage and car loans on time, his outstanding delinquent debt of about \$92,500 exceeds his annual income and there is no indication that his spouse has increased the amount of her financial contribution to the household.

Concerning potential mitigating conditions, his financial problems are considered too recent and repeated to apply AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is not likely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." AG ¶ 20(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," applies, but only in part. Applicant testified he was pressured into buying his current home by his spouse, who did not want to live in the residence Applicant had shared with his first wife (Tr. 90). The decision to rent out their previous home rather than list it for sale was also within his control. However, Applicant's financial problems are attributable in significant part to the loss of rental income and then no buyer for the home. He did not earn enough to cover the mortgages on two houses, and apparently he could not convince his spouse to cover more than 15% of their household expenses. But AG ¶ 20(b) does not mitigate or extenuate the

financial judgment concerns raised by him taking out an automobile loan of \$36,073 when he was having trouble meeting his other financial obligations, and by his failure to remain current in his utility costs on his new home. Applicant testified that his current paycheck covers his bills, but he provided no documentation showing he had satisfied the utility arrearage.

Moreover, it would be premature at this juncture to fully apply AG ¶ 20(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.” Applicant received about three hours of online financial counseling in April 2009, where he learned about money management and that it was “not good” to hold too many credit cards (Ex. K, Tr. 151-52). Applicant testified with no rebuttal that he created a budget as a result of the counseling and he relies on his debit card for purchases (Tr. 152). These are positive steps toward avoiding recurrence of similar financial problems in the future. Yet, these are very recent changes in his financial practices. While he paid the debt in SOR 2.a in 2004, and had been paying into a debt resolution plan for one year, he has not credibly explained his failure to pay off one or more of the smaller debts in the SOR (e.g., SOR 2.e or 2.g).

After his May 2008 subject interview, when it became clear that his financial problems were an issue for his clearance, Applicant contracted with a debt management company for assistance in resolving his delinquent debts (SOR 2.b-2.g and 2.i). He did not include the \$49,525 debt in SOR 2.h because it had been charged off. Beginning on July 21, 2008, the debt resolution firm began debiting about \$375 or \$385 from Applicant’s bank account each month (Exs. 3, O). While it qualifies as a good-faith effort on Applicant’s behalf under AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” it does not fully mitigate his exhibited financial irresponsibility in taking on more debt than he could reasonably afford, and in neglecting his delinquent accounts until they became an issue for his clearance. He took on a car loan of \$36,073 in 2006 when he was having trouble paying some of his financial obligations. In September 2008, he took out a new mortgage that exceeds the value of his home. He also started a doctoral study program at some financial cost to him in out-of-pocket costs or student loans, or both, when he owed about \$92,000 in delinquent debt. Even if I accept his uncorroborated assertion that his present paycheck is sufficient to cover his monthly obligations, he remains under a substantial debt burden that is not likely to be resolved in the near future. He showed himself to be vulnerable to pressures from his spouse (i.e., the house purchase, accepting her limited financial contributions to the household) in the past and there is no indication of a change in that situation.

Whole-Person Analysis

The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance. AG ¶ 2(a). Applicant understandably maintains close personal ties to his mother. His spouse shares similar bonds of ties of affection and obligation to her mother as well.

Although the risk of undue foreign influence is heightened somewhat because of these foreign family ties, Applicant has stronger countervailing ties to the U.S. in his home, immediate family (including children who were born here), and his career that he is not likely to jeopardize by succumbing to any undue foreign influence.

His desire to retain his defense contractor employment, rather than problems comprehending the English language, is seen as the likely cause of discrepancies in the record concerning his and his spouse's contacts with foreign family members (e.g., whether his spouse last travelled to Nigeria in May 2008 or three or four years ago, whether he called his mother twice a month or once yearly, whether his mother was in the U.S. a couple of years ago or about 18 years ago). This tendency to act in self-interest, which is incompatible with a security clearance, is similarly evident in his disregard of his consumer credit obligations until they became an issue for his security clearance. AG ¶ 2(a)(3) (noting the relevancy of, "the frequency and recency of the conduct"). While his financial problems are attributable in part to a loss of rental income, see AG ¶ 2(a)(2), ("the circumstances surrounding the conduct, to include knowledgeable participation"), Applicant's financial situation was not helped by his decisions to take on sizeable loans. Giving a debt resolution firm authority to debit his account and to make settlement decisions on his behalf may eventually lead to a resolution in the future, but it is not persuasive of whether Applicant has the financial knowledge, intent, and assets to live within his means. AG ¶ 2(a)(6) (stating, "the presence or absence of rehabilitation and other permanent behavioral changes"). He has taken some control by relying on his debit card for purchases and by maintaining a separate account from his spouse, but these are very recent changes. Furthermore, there is a "potential for pressure, coercion, exploitation, or duress." AG ¶ 2(a)(8). The unresolved delinquent debt exceeds his annual income. Applicant has a reputation for hard work and good character among those who know him, but based on the record before me, I am unable to find at this time that it is clearly consistent with the national interest to continue his 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant

Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	Against Applicant
Subparagraph 2.g:	Against Applicant
Subparagraph 2.h:	Against Applicant
Subparagraph 2.i:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Eligibility for access to classified information is denied.

ELIZABETH M. MATCHINSKI
Administrative Judge