



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



In the matter of:)
)
) ISCR Case No. 08-10025
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro se*

July 24, 2009

Decision

MASON, Paul J., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his Security Clearance Application (SCA), on August 9, 2007. On January 8, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under foreign influence (Guideline B). The action was taken pursuant to 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) promulgated by the President on December 29, 2005, and made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his answer to the SOR on February 23, 2009. DOHA issued a notice of hearing on March 20, 2009, and the hearing was held on April 8, 2009.

At the hearing, the government submitted four exhibits (GE 1 through 4). Applicant objected to GE 2 and GE 4 (Tr. 13-20), contending that there was inaccurate information about his passport in the exhibits that had been mitigated. I overruled his objection, explaining that the Guideline C issues had been mitigated, and the only issues for hearing were those arising from Guideline B.

Applicant testified at the hearing, and presented four exhibits (AE A through AE D) that were received in evidence without objection. AE E and AE F were submitted following the hearing and have been received in evidence. The two exhibits include performance evaluations, and a letter of compelling need.

Administrative notice was also taken of several United States Government agency publications that describe the government of Nigeria, its human rights record, and various problems U.S. citizens face in traveling to the country. DOHA received the transcript (Tr.) on April 15, 2009.

Findings of Fact

The SOR alleges five allegations under foreign influence (Guideline B). Applicant's admissions to all subparagraphs shall be incorporated in the factual findings. Applicant is 53 years old. His wife was born in the southeastern part of the United States (U.S.) in 1947. They met in the U.S. in 1980 while he was in undergraduate school, and married in August 1981. He has worked as an electrical engineer for his current employer since June 1996. He has held a security clearance since 1998, without security violations (Tr. 45).

Applicant was born in Nigeria on August 24, 1955. At age 22 (1978), Applicant immigrated to the U.S. for educational purposes. Between 1980 and 1982, he attended two educational institutions. He received an associate degree from a local technical institute, and a bachelors degree in electrical engineering from a university located in the western part of the U.S. He enrolled in graduate school in January 1984, and received his master's degree in electrical engineering in September 1986.

Applicant received his U.S. citizenship in January 1991, and his U.S. passport in May 2004.

Applicant's father, 83 years old, is a resident citizen of Nigeria (SOR 1.a.). He was employed as a police officer until the country won its independence from Great Britain in 1960. He then formed a construction company (time not identified), and built private buildings (Tr. 25-28). Applicant's father is now retired. He receives no pension, but earns an income from a fishing business he owns (Tr. 29). Applicant's telephonic contact with his father is weekly (GE 2).

Applicant's mother, a resident citizen of Nigeria, is 77 years old (SOR 1.b.), and retired from a private business making sweaters (Tr. 33). Until at least August 15, 2002 (GE 4), Applicant was providing her with financial support of \$2,000 to \$4,000 a year. He testified that his mother and father support themselves now (Tr. 34), but he and his siblings will give his mother something once or twice a year (*Id.*). Neither his father nor mother knows how Applicant is employed; they do not ask about his work (*Id.*). Applicant's telephonic contact with his mother is weekly (answer to SOR; GE 2).

Applicant's brother "F," a resident citizen of Nigeria, is 50 years old (SOR 1.c.). He is an engineer (GE 4). He has worked as the Director-General of the Nigerian Atomic Energy Commission since April 2006 (Tr. 49). The Commission is an agency of the Nigerian federal government (Tr. 53). The agency is trying to build a nuclear facility to generate power for the country (Tr. 36). When asked whether brother F is employed in a high position in the Nigerian government, Applicant testified:

Not administrative, I mean, basically it is a scientific body - - in pursuit of being able to use nuclear energy. That is involving security or any financial type of decisions of the Nigerian government so he's not part of the functionaries that would be involved in human rights abuse or in financial matters. It is strictly a very technical position (Tr. 49-50).

Applicant subsequently testified that his brother is "pretty well" known all over the world, not just in Nigeria (*Id.*), and noted that brother F reports to the Minister of Science and Technology, a cabinet level position (Tr. 51). Brother F's wife is employed as a high level, civil servant in one of the state governments of Nigeria (*Id.*). Applicant has telephonic contact with brother F every two weeks (GE 2; Tr. 52). Brother F relies on Applicant to periodically check on the welfare of brother F's three children in American colleges. (Tr. 36).

Applicant's brother "S" is 41 years old, and employed as an accountant for one of the state governments of Nigeria (Tr. 52; GE 2). The wife of brother S is a teacher in the school system controlled by one of the state governments (Tr. 54). As with brother F, Applicant's contact with brother S is every two weeks by telephone (GE 2).

Applicant's sister "D" is 60 years old. She is employed as a school administrator for one of the state governments of Nigeria (GE 4). Sister D's husband is a minister (Tr. 55). Applicant's next oldest sister "L" is 57 years old (Tr. 38; GE 4). Sister L's husband is a lawyer with his own practice (*Id.*). She also works as a school administrator. Applicant's youngest sister "B" is 46 years old and is employed as a catering officer for one of the state governments (*Id.*). Sister B's husband is an employee at a private cement company (*Id.*). Applicant contacts his sisters by telephone every month or every two months by telephone (Tr. 39).

Applicant has no financial interests in Nigeria (Tr. 39; GE 1), and has no inheritance interests in the country (Tr. 56). All his assets are located in the U.S. (Tr. 39). He owns his own home valued at approximately \$340,000, and, in addition to

stocks,¹ his retirement account amounts to about \$240,000 (Tr.41). His wife inherited a house worth about \$100,000, in addition to a time-share unit worth \$60,000 (Tr. 42), both in the U.S. Since 1996, he has been active with a charitable organization, cooking and feeding the needy (T. 60). His wife participates in similar community-assistance causes targeting the elderly and impoverished.

Applicant has never voted in a Nigerian election since immigrating to the U.S., and has always voted in U.S. elections (Tr. 45, 59). His documentary exhibits include his statement that he will renounce his Nigerian citizenship if asked by the U.S. government (AE A). In AE C, Applicant's security manager advised that he was holding Applicant's passport. Applicant provided two foreign contact forms identifying the foreign contact and detailing the extent of his contact with non-U.S. citizens.

Character Evidence

Applicant's performance evaluations for 2006 through 2008 (AE E) show he is a high contributor. AE F, a one-page document, entitled "Letter of Compelling Need," was also admitted in evidence. The letter describes Applicant's educational background, his expertise, and his foreign relatives listed in the SOR. The last paragraph of the letter contains a request for waiver of the "SAPCO Governing Eligibility for Access to SAP (special access programs)." The letter, marked unclassified, is unsigned by the "Contractor Program Security Officer" and the "Program Manager." I have no authority to entertain this request for waiver. The only authority I have (as set forth in the definitions section of DoD Directive 5220.6 at 3.2.) is to determine whether it is clearly consistent with the national interest to grant a security clearance. Even if I had the authority, I would reject the request as the exhibit is unsigned by the security officer and the program manager.

Administrative Notice

I have taken administrative notice of facts contained in the administrative notice documents provided by the government. The administrative notice documents are:

U.S. Department of State, *Background Note: Nigeria*, dated December 2008;

U.S. Department of State, *Country Specific Information, Nigeria*, dated June 2, 2008;

U.S. Department of State, *Travel Warning: Nigeria*, dated December 2, 2008;

U.S. Department of State, *2008 Human Rights Report*, February 25, 2009;

¹ Applicant did not indicate the value of his stock.

Congressional Research Service, CRS Report for Congress, *Nigeria: Current Issues*, dated January 30, 2008 (Congressional Research Service Report);

U.S. Diplomatic Mission to Nigeria, Warden Message, March 16, 2009.

Nigeria, since gaining its independence in 1960, has been controlled more by military rulers than democratically elected civilian rulers. Even though the government returned to civilian rule in 1999, the government continues to have a poor human rights record. The lack of law and order in various areas of the country results in internal, periodic armed conflicts between religious, political and ethnic factions, and external conflicts with travelers to the country, particularly in the Niger Delta region. Also, Nigerian government officials continue to engage in torture, arbitrary arrests, and judicial corruption. Recognizing the troubling problems in the Niger Delta region, i.e., the rash of abductions since January 2008, the current president, elected in May 2007, has pledged to restore peace and security to the region, while instilling long-term, electoral reform throughout the country. President Bush considered Nigeria an important partner in the war on terror.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, and are useful in evaluating an applicant's eligibility for access to classified information.

In reaching a decision under the Directive, the administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The administrative judge's ultimate adjudicative goal is a fair, impartial and common sense decision that incorporates a number of variables known as the "whole person concept."

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The protection of the national security is the paramount consideration in every decision. AG ¶ 2.(b) recommends that any reasonable doubt concerning personnel being considered for access to classified information should be resolved in favor of national security. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Foreign Influence

¶ 6. *The Concern.* “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 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 U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.”

The two conditions that create security concerns are:

Foreign Influence (FI) disqualifying condition (DC) ¶ 7.a. (*contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*); and

FI DC ¶ 7.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*)

Having family ties in a foreign country is not automatically disqualifying under the foreign influence guideline. However, when an applicant has contact with his relative(s) in a foreign country, that contact is sufficient to raise the potential for foreign influence. Applicant's regular contact with his parents, two brothers, and three sisters, all resident citizens of Nigeria, raises a heightened risk of foreign pressure and manipulation. Even though they are not agents of a foreign power, two of his sisters are school administrators in state governments of Nigeria, while the third sister is a catering officer for one of the state governments. Brother S is an accountant for a state government. Finally, brother F is employed by the federal government as the Director-General of the Nigerian Atomic Energy Commission.

In addition to the foreign influence concerns triggered by Applicant's contact with his relatives, the last sentence of the FI guideline states that, “Adjudication under this Guideline can and should consider 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 the risk of terrorism.” The administrative notice documents disclose facts that law and order problems still plague parts of Nigeria, notwithstanding the government's ongoing campaign for stability and security

throughout the country. Although there is no evidence that the Nigerian government targets U.S. citizens to obtain protected information, the government's poor record of human rights abuses, coupled with its misconduct and corruption record, impedes meaningful efforts at long-term reform.

Under FI DC ¶ 7.a., Applicant's contacts with his relatives in Nigeria, together with the security problems that exist in the country, create a heightened risk of foreign exploitation and pressure against Applicant. Under FI DC ¶ 7.b., his contacts with his relatives also raise the potential for conflict of interest between his security obligations and his desire to help his relatives. The foreign influence concerns require Applicant to present evidence in mitigation to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him.

The three conditions that could mitigate foreign influence concerns are:

FI MC ¶ 8.a. (*the nature of the relationships with foreign persons, the country in which these persons are located, or the position 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.*);

FI MC ¶ 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 minimal, or the individual has such deep and long-lasting 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*);

FI MC ¶ 8.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*)

Applicant receives no mitigation under FI MC ¶ 8.a. or FI MC ¶ 8.c. His weekly contacts with his parents, and bi-weekly to monthly contacts with his siblings continue to raise the remote possibility that the Nigerian government or criminal factions within the country could apply pressure through his relatives to Applicant.

However, based on the magnitude of Applicant's firm ties to the U.S., he receives substantial mitigation under FI MC ¶ 8.b. Applicant's mother is retired and his father is operating a fishing business during his retirement. Four of his five siblings work for one of the state governments in Nigeria, either as accountant or as administrators. There is no evidence that any of the siblings or their spouses exercise any policy functions for the state or federal government of Nigeria. Brother F is employed as the Deputy-General of the country's Atomic Energy Commission. Even though employed at the federal level of the Nigerian government, and reporting to the Minister of Science and Technology, Applicant's brother holds a technical position with the scientific objective of

supplying power for the country. He is not involved in any security or financial decisions of the Nigerian government. In addition, given the friendly relations between the country and the U.S. since transition to civilian rule in 1999, it is unlikely the Nigerian government would want to jeopardize the relationship by exerting pressure or influence on brother F, or any other family member, to cause Applicant to have choose between Nigeria and the U.S. government.

Applicant's strong relationship with the U.S. convinces me he can be counted on to resolve any conflict of interest in favor of the U.S. government. This relationship started in 1978 when he immigrated to this country for advanced education. He married his U.S.-born wife in August 1981. He successfully completed his college education in 1982, and his master's degree in electrical engineering in 1986. He has been a U.S. citizen since 1991. He was hired by his current U.S. employer in 1996, and has held a security clearance since 1998, without any security violations. His substantial U.S. assets include a home worth about \$340,000, stocks, and a retirement account of about \$240,000. His wife owns a house worth \$100,000 and a time-share unit valued at \$60,000. He has no property or other financial interests in Nigeria.

Applicant is fully aware of his reporting requirements when interfacing with non-U.S. officials. His performance between 2006 and 2008 has been exemplary. Considering the evidence as a whole, I find the FI guideline for Applicant.

Whole Person Concept (WPC)

My finding for Applicant under the FI guideline must still be evaluated in the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors at ¶ 2.(a) of the AG: (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 the participation was 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.

Applicant is 53 years old. He has been in this country since 1978. He has been married to a U.S. citizen since 1981, and has been a U.S. citizen since 1991. He has been employed by the same employer since 1996, and enjoys very good performance evaluations over the past two years. He has held a security clearance since 1998, with no security miscues. Since 1996, Applicant has been active with a national charitable organization, preparing and serving meals to the destitute. His wife is involved in similar causes designed to provide help to those that are elderly or less fortunate. Should Applicant find himself in a future position of having to choose between a family member and U.S. interests, I believe he will select the U.S. Accordingly, I find for Applicant under the FI guideline.

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 (Foreign Influence, Guideline B):	FOR APPLICANT
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant

Conclusion

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

Paul J. Mason
Administrative Judge