



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



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-10238

**Appearances**

For Government: John Glendon, Esquire, Department Counsel  
For Applicant: *Pro Se*

September 30, 2009

**Decision**

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WESLEY, Roger C., Administrative Judge:

**History of Case**

On April 9, 2009, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which 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 Applicant, and recommended referral to an administrative judge to determine whether his clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on April 28, 2009, and requested a hearing. The case was assigned to me on June 17, 2009, and was scheduled for hearing on June 29, 2009. A hearing was held on the scheduled date for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At the hearing, the Government's case consisted of nine exhibits; Applicant relied on one witness (himself) and 11 exhibits. The transcript (Tr.) was received on July 8, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access classified information is denied.

Besides its nine exhibits, the Government requested administrative notice of seven documents: *Background Note: Nigeria*, U.S. Department of State (April 2009); Congressional Research Service, *CRS Report for Congress, Nigeria: Current Issues* (January 2008); *Country Specific Information, Nigeria*, U.S. Department of State (April 2009); *2008 Human Rights Report: Nigeria*, U.S. Department of State (February 2009); *Travel Warning: Nigeria*, U.S. Department of State (December 2008); *Warden Message*, U.S. Diplomatic Mission to Nigeria (March 2009); and *Warden Message*, U.S. Diplomatic Mission to Nigeria (April 2009).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 (App. Bd. April 12, 2007); ISCR Case No. 05-11292 (App. Bd. April 12, 2007). Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the above-named background reports addressing the geopolitical situation in Nigeria. Administrative notice was extended to the documents themselves, consistent with the provisions of Rule 201 of Fed. R. Evid. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing Nigeria's current status.

### **Summary of Pleadings**

Under Guideline F, the SOR alleges that Applicant (a) incurred three adverse judgments against him that exceed \$18,000 and (b) accumulated seven debts exceeding \$7,000.

Under Guideline B, the SOR alleges that Applicant: (a) has a spouse who is a citizen of Nigeria; (b) has a mother and two brothers who are dual citizens of the U.S. and Nigeria; (c) has a father who is a citizen of Nigeria, and resides in both the U.S. and Nigeria; (d) has a father who previously served as a contractor to the Nigerian government; (e) has two sisters who are citizens of Nigeria; (f) has parents in-law who are citizens of and reside in Nigeria; (g) resided and worked in Nigeria between December 2006 and July 2007; (h) traveled to Nigeria in or about December 2000, December 2001, July 2002, December 2002, and December 2005; and (i) maintains a savings account in Nigeria.

Under Guideline E, the SOR alleges that Applicant falsified the security clearance application he completed in January 2008, when he failed to disclose (a) his possession of an active Nigerian passport that was issued in January 2001 and was due to expire in December 2010 and (b) his arrest in May 2006 for failure to appear on a traffic-related offense.

For his answer to the SOR, Applicant admitted most of the allegations, but denied generally being financially overextended, being at risk of foreign influence by virtue of his having family members (both immediate and extended) in Nigeria, his keeping a small

bank account in Nigeria, his traveling to Nigeria between December 2000 and December 2005, or by falsifying his e-QIP.

### **Procedural Issues and Rulings**

Prior to the close of the hearing, Applicant asked to leave the record open to afford him the opportunity to supplement the record to explore the history of his listed judgments (creditors 1.a through 1.c) and to try to address them. For good cause shown, Applicant was granted seven days to supplement the record with information pertaining to his three outstanding judgments and how he intends to address them. The Government was afforded three days to respond. Within the time permitted, Applicant supplemented the record with seven exhibits. The Government interposed no objections, and Applicant's submissions are accepted as exhibits L through Q.

Applicant made a supplement request in July 2009 to open the record to permit him to submit an agreed settlement of his creditor 1.a judgment debt. There being no objection from Department Counsel, and for good cause shown, Appellant was granted leave to supplement the record with his settlement agreement and a copy of his first payment installment under the terms of the agreement. Applicant's post-hearing submission is accepted as exhibit R.

### **Findings of Fact**

Applicant is a 29-year-old software engineer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

#### **Applicant's background**

Applicant was born in Nigeria in 1978 to parents of Nigerian heritage. He immigrated to the U.S. in July 1994 on a business visa to pursue his college education (see ex. 8; Tr. 101). Records show he attended recognized universities of higher learning between 1995 and 2003. Once in the U.S., he switched to an L1 work visa, and later to permanent residence status (ex. 8). Applicant earned a B.S. degree in computer science in 1999 and an M.S. degree in information security in 2003 (see ex. 1).

After obtaining permanent residence status in 1998, Applicant applied for U.S. citizenship (see ex. 8). He became a naturalized U.S. citizen in August 2004 (see ex. 1; Tr., 101-02, 105). However, he did not renounce his Nigerian citizenship, and is a dual citizen of the U.S. and Nigeria. He maintained his dual citizenship and Nigerian passport for ease of travel purposes when visiting his family members in Nigeria.

Applicant traveled to Nigeria in December 2005 to marry his current wife. His spouse, in turn, remained in Nigeria for a couple of years, pending her application for a work permit in the U.S. (Tr. 104-05). Applicant returned to Nigeria in December 2006 to be with his wife who was pregnant at the time and did not have a visa to join him in the

U.S. (Tr., at 105). In July 2007, Applicant's wife obtained her visa, entitling her to enter the U.S. (Tr., at 102). Shortly thereafter (in July 2007), Applicant returned to the U.S., this time with his wife. Upon her arrival in the U.S., she applied for permanent residence status. She was granted permanent residence status in May 2008 (see ex. F; Tr. 102), and will apply for U.S. citizenship as soon as she is eligible.

Applicant has two children by his wife (Tr. 102). His first child was born in the U.S. in July 2007 (Tr. 102-03), and is a U.S. citizen by birth. His wife gave birth to a second child this year (Tr.112)

Between December 2000 and December 2005, Applicant traveled to Nigeria on six separate occasions to see his wife and family: in December 2000, December 2001, July 2002, December 2002, December 2005, and December 2006 (see exs. 1 and 8). On all but two of his trips, he used his U.S. passport for entry in and exit from Nigeria (see ex. 8). He recollects using his Nigerian passport to travel to Nigeria before he became a U.S. citizen, and twice for the same purpose since becoming a U.S. citizen: once in 2005 and once in 2006 (see ex. 8). Applicant documents obtaining his U.S. passport in December 2004, and surrendering his Nigerian passport (issued in 2001 and due to expire in January 2010) to his facility security officer (FSO) in September 2008 (see exs. 8, 9, and I; Tr. 124-25).

Both of Applicant's parents are Nigerian citizens. His mother acquired U.S. citizenship in August 2005 and currently resides in the U.S. (see exs. 1 and 8; Tr. 113). She is a homemaker with no ties to the Nigerian government. His father immigrated to the U.S. and established permanent residence status in this country several years later (see ex. 8; Tr.113-14). He continues to split his time between the U.S. and Nigeria to attend to his importing business (Tr. 113-14). His father's principal Nigerian customers are schools and hospitals (primarily private ones). Before immigrating to the U.S., his father was involved in supply projects for the Nigerian government. He severed his ties with the Nigerian government before he immigrated to the U.S., and has no plans to reinstate them (Tr., 68-69).

Applicant has two brothers and two sisters. His brothers immigrated to the U.S. before Applicant, and became naturalized U.S. citizens in September 2004 (see exs. 1 and 8; Tr.101, 115). They currently reside in the U.S. and have no known contacts with the Nigerian government (Tr.115-16). Applicant's sisters both immigrated to the U.S. prior to Applicant, and they, too, have continued to reside in this country (Tr. 101). Each of his sisters has permanent residence status (see exs. G and H). Both have expressed their individual intentions to apply for U.S. citizenship as soon as they are eligible to do so (Tr.116).

Besides his only immediate and extended family members residing in Nigeria, his wife's parents and siblings are also citizens and residents of the country (Tr. 116-17). His father-in-law is a retired dentist; his mother-in-law is a homemaker (Tr. 69, 117). Neither has any connections or interests with the Nigerian government. His in-laws all

reside in the Eloran region, which is situated about five hours northwest of the capital city of Lagos (Tr. 118-20).

Applicant still maintains a small savings account in Nigeria. He opened this account when he returned to the country in December 2006, and has not maintained it since he returned to the U.S. in July 2007 (Tr., at ). He knows of no conflicts of interest that his parents could have with the Nigerian government and no reason to believe he could ever have a conflict of interest with his parents and the Nigerian government that could create a potential conflict of interest with his security responsibilities to the U.S. Other than this small savings account, he has no assets or financial interests in Nigeria or any other foreign country (see ex. 8). By contrast, all of his assets are in the U.S. (Tr. 78).

Applicant does not belong to any foreign organizations, and his parents and extended family members remain his only contacts in Nigeria. He has never accepted any rights or benefits from the government of Nigeria, and does not enjoy any rights or privileges as the result of his dual citizenship status (ex. 8). Applicant has never pursued any political office in Nigeria, or other foreign country, and has never served in a foreign military, or voted in a foreign election (see ex. 8).

### **Nigeria's country status**

Nigeria is a federal republic in western Africa that gained its independence from Great Britain in 1960 as a federation of three regions (northern, western and eastern). Today, Nigeria comprises 36 states and the capital territory of Lagos. It has a population base of 140 million (see *Background Note: Nigeria, supra*, at 7-8). Since gaining its independence, Nigeria has experienced periods of political instability, economic crises, ethnic and religious conflict, extreme poverty, a lack of law and order, judicial corruption, and military coups (see *CRS Report for Congress, Nigeria: Current Issues, supra*, at summary; *Background Note: Nigeria, supra*). Nigeria has been ruled by its military for 28 of its 43 years since independence. The country returned to civilian rule in May 1999 (see *CRS Report for Congress, Nigeria: Current Issues, supra*).

Besides being the largest trading partner of the U.S. in sub-Saharan Africa, with total two-way trade valued at \$30.8 billion, Nigeria remains Africa's largest oil producer. State Department reports confirm that Nigeria's bilateral relationship with the U.S. has continued to improve (see *Background Note: Nigeria, supra*, at *id.*, at 8-11). The trade balance significantly favors Nigeria, though, due to its oil exports, which continue to be substantial.

Insurgent activities have brought turmoil to the Niger Delta region's oil producing sector over perceived uneven and/or unfair oil revenue distribution (see *CRS Report for Congress, Nigeria: Current Issues, supra*, at 15-16). In response to numerous reports of kidnaping for ransom of persons associated with the petroleum sector (including U.S. citizens), the U.S. State Department has updated its *Travel Warning* for Nigeria in December 2008 (see *Travel Warning: Nigeria, supra*, at 1-2). The *Travel Warning* advises

U.S. citizens of the dangers of travel to Nigeria and of further deterioration of security in the Niger Delta region (see *id.*; *Country Specific Information, Nigeria, supra*, at 2-3). The *Travel Warning* states, too, that al-Qaeda leadership operating in the region has expressed interest in overthrowing the ruling authorities (see *id.*, at 1).

Despite its democratic government and an established judiciary, Nigeria's government suffers from a poor human rights record (see *2008 Human Rights Report: Nigeria, supra*, at 1-24). The State Department's *2008 Human Rights Report* documents Nigerian government officials at all levels committing serious abuses against Nigeria's citizens and visitors. Documented abuses by security forces include politically motivated, extrajudicial killings as well as torture and arbitrary arrest (see *id.*, at 7-12). Instability and incidents of armed conflicts between religious, political, and ethnic factions comprising Muslim, Christian and other ethnic groups have marked Nigeria's political landscape (*Warden Messages, supra*; *Travel Warning: Nigeria, supra*, at 1).

In the areas of peace and security, the U.S. has supported peacekeeping and simulation centers at Nigeria's armed forces staff college (Africa's only such center), while promoting effective civilian oversight of the military and its adherence to human rights norms (see *Background Note: Nigeria, supra*, at 12). In addition to its efforts aimed at fostering maritime cooperation with security services in the Niger Delta region, the U.S. has continued to support the European Union's leading role in helping Nigeria fight corruption, organized criminal elements, drug traffickers, and terrorists (see *id.*). Reports confirm that Nigeria remains a member in good standing of ECOWAS, a West-African trade union and a constructive trading partner with the U.S. (see *id.*).

### **Applicant's finances**

While in college (1995-2003), Applicant obtained several credit cards, which he used to finance personal items (ex. 8). With these credit cards, Applicant accrued a considerable amount of debt. With only part-time jobs to sustain him in college, he fell behind on his credit card debts. Once he graduated and began working, he was able to address most of these old credit card debts. But he also assumed new credit card debts, which he was able to repay, as long as he maintained a full time job (ex. 8).

Sometime in 2001, Applicant relinquished his full-time job and entered graduate school. With only a part time job to take care of his personal needs while he attended school, he fell behind with his financial obligations and could not bring them current (see ex. 8).

When he returned to full time employment in 2003, Applicant was able to address his old debts again (see ex. 8). However, he did not earn enough money to repay all of his old obligations (ex. 8). As a result, his old debts became delinquent, and he began accumulating additional interest and penalties. Once he began earning enough money to initiate major repayment efforts, he learned that his debts had become too large to repay. His full time jobs lasted about three years (2003 to 2006). Finding his full-time job did not satisfy his expectations, he left the job in early 2006. Between 2006 and 2008, he worked

small jobs (including the jobs he worked while living in Nigeria in 2007) and could not address his old debts (see ex. 8).

Records document that three of Applicant's creditors obtained adverse judgments against him over a three-year span between December 2005 and November 2008 (see exs. 4, 5 and 8). Creditor 1. a obtained a default judgment against Applicant in November 2008 in the amount of \$10,722. This creditor 1.a judgment was based on a debt owed to creditor 1.h, on one of the credit card accounts Applicant opened in 2003 (see exs. 3, 4 and 8; Tr., at 88-92). Applicant wrote to the court in March 2009, claiming he was never served with the complaint and never received any notices of the scheduled default hearing (see ex. M). Applicant documents his motion to the court to vacate the default and the court's ensuing order of June 2009 vacating its entry of a default judgment (see exs. A, B and L). However, he proffered no defense of the underlying debt.

In a follow-up submission, Applicant documented a stipulation of settlement he completed with creditor 1.a and a copy of a money order of \$250.00 that represents his first installment under his settlement agreement (see ex. R). The terms of the settlement provide for a reduced payout of \$3,100, payable in monthly installments of \$250, commencing in August 2009. Under this stipulated settlement, Applicant's default on any of the scheduled monthly payments is grounds for restoring the judgment to the full amount demanded in the complaint, plus costs and interest at the legal rate of interest provided by state law (ex. R).

Two other creditors (creditors 1.b and 1.c) obtained adverse judgments against Applicant (see exs. 3, 4 and 6; Tr., at 95-100). Creditor 1.b obtained its judgment in December 2005 in the amount of \$4,705. This judgment covers an underlying credit card account that Applicant opened in February 1999 (see ex. 4). This is one of the old credit card accounts that Applicant defaulted on during periods of unemployment and underemployment. Creditor 1.c obtained a judgment against Applicant in January 2006 for \$3,670 that covers an underlying credit card account with the same creditor referenced in creditor 1.b's judgment (see ex. 5).

Applicant documents his post-hearing contacts with creditors 1.b and 1.c to explore monthly payment arrangements. So far, Applicant has not been able to work out any payment agreements with either of these judgment creditors (see ex. L). He hopes to establish payment plans with these two judgment creditors after he settles his smaller debts (Tr., at 86-88).

Besides Applicant's three judgment creditors, he accumulated a number of other delinquent debts between 2003 and 2008 (seven in all). These accrued debts exceed \$7,000 in the aggregate and have not been repaid to date. Two of the listed debts (creditors 1.i and 1.j) represent duplications of his creditor 1.e debt. Applicant documents a payment offer from creditor 1.e on the listed \$772 delinquent balance (see ex. Q). This July 2009 settlement offer provides for payment of \$290, payable in two installments beginning in July 2009. Applicant does not include any acceptance or payment

documentation in his post-hearing submissions. So, at this time it is unclear whether he accepted the creditor's offer and made the required initial payment.

Applicant's two remaining debts are listed as creditors 1.f and 1.g. Creditor 1.f represents a delinquent debt from an aged auto installment account opened in 1999 in the amount of \$595 (see ex. 6). While Applicant remains open to making \$100 monthly payments to this creditor, he has not been able to make any payment arrangements to date on this debt. Applicant's other debt (a creditor 1.g debt) covers an unpaid traffic ticket in the amount of \$460. Applicant has not made any efforts to date to pay this debt, and intends to address it when he has resolved his debts with creditors 1.d and 1.e.

Applicant attributes his debt problems to unexpected medical emergencies and unstable employment. Most of his accrued debts are quite old (see exs. 4 through 6). In the past, he has had his wages garnished to cover a fitness center debt. Records show that when he did not pay the bill, the fitness center filed suit, obtained a judgment, and garnished his wages (around \$2,800) before filing a warrant of satisfaction (see ex. 9; Tr., at 110-11). Applicant satisfied this underlying debt through the garnishment process, which ended in January 2009 (Tr., at 111).

At this time, Applicant has limited means to address his listed debts. He has a net monthly income of \$3,911, net monthly expenses of \$2,965, and a net monthly remainder of \$565 (see ex. 3).

Since the hearing, Applicant has met with a financial adviser to discuss his plan for addressing his debts with monthly payment arrangements (see ex. Q). He reportedly discussed his debt to income ratio with his financial adviser, and how it might be improved with the implementation of his payment plans. Details of his discussions with this financial adviser are not expressed in the advisor's July 2009 letter.

### **Applicant's e-QIP omissions**

Asked to complete an e-QIP in January 2008, Applicant omitted his possession of an active Nigerian passport issued in January 2001. His Nigerian passport was not due to expire until December 2010 (see ex. 1). Applicant attributes his passport omission to his mistaken focus devoted to the issuance date of the passport, and failed to pick up the conjunctive part of the question that asked him about his continued possession within the past seven years (Tr., at 124-29).

In the same e-QIP Applicant completed in January 2008, Applicant also omitted his May 2006 arrest for failure to appear. Applicant did subsequently appear on the charge and satisfied the warrant. In turn, he was assigned a court date in September 2006 to appear and contest the underlying charge (Tr., at 139). When he appeared in court, he pleaded guilty to the original charge (see ex. J; Tr., at 139-43).

Applicant attributes his traffic ticket omission to his claimed unawareness of his having an arrest record (see Answer; Tr., at 130-34). Since he was never taken into



custody, and never (to the best of his knowledge) fined over \$150 (the e-QIP threshold for traffic-related offenses), he denied any arrest associated with the ticket. He was surprised when he later checked the police department's records in April 2009 and found a police report of the incident on file with the department's records (see Answer; Tr., at 141-42).

When asked by an interviewing agent from the Office of Personnel Management (OPM) in a follow-up interview about his holding a valid Nigerian passport, Applicant acknowledged his holding the passport without any apparent prodding or adversarial confrontation (see ex. 9). He was never asked by the OPM agent about his 2006 arrest, and Applicant never volunteered any information to the agent.

Considering all of the surrounding circumstances of Applicant's e-QIP omissions and his ensuing passport disclosure, his claims of mistaken understandings about the scope of the pertinent e-QIP questions are accepted as truthful. Inferences warrant that his omissions were not intentional ones.

Applicant is well regarded by his supervisors. They consider him a valued employee who retains the confidence of his management team (see ex. K). His group manager characterizes him as polite, professional and dedicated in his work. His project lead describes him as reliable, moral and ethical. Both members of Applicant's management team support his security clearance application.

### **Policies**

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by administrative judges in the decision-making process covering DOHA cases. These Guidelines require the administrative judge to consider all of the "[c]onditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the administrative judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the administrative judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy concerns are pertinent herein:

### **Financial Considerations**

*The Concern:* 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. See revised Adjudication Guidelines (AGs), ¶ 18.

### **Foreign Influence**

*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 the this Guideline can and should considered 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, ¶ 6.

### **Personal Conduct**

*The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. AG ¶ 15.

### **Burden of Proof**

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted facts alleged in the Statement of Reasons; and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a

security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case. Because Executive Order 10865 requires that all security clearances be clearly consistent with the national interest, "security-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Applicant presents as a conscientious quality assurance specialist for a defense contractor who after being born and raised in Nigeria, immigrated to the U.S. in 1994 to pursue his education. While most of his immediate family members reside in the U.S., either as dual U.S. citizens or with permanent residence status, his father (who is a Nigerian citizen) splits his time between the U.S. and Nigeria and retains business interests in Nigeria. Since immigrating to the U.S., Applicant accumulated a number of delinquent debts during periods of unemployment and underemployment, most of which he has not been able to resolve.

Applicant's debt accruals raise initial security concerns about the stability of his finances which can affect his reliability and trustworthiness. His family relationships with his immediate and extended family members with demonstrated ties to Nigeria raise concerns about his ability to avert potential conflicts of interests over his trust commitments to the U.S. and his duties and responsibilities to his immediate and extended family members. Security concerns are raised, too, over Applicant's omissions of his Nigerian passport and traffic-related arrest when he completed his January 2008 e-QIP.

### **Financial Issues**

Security concerns are raised under the financial considerations guideline of the revised AGs where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts and his past inability to pay these debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines DC ¶ 19(a), "inability or unwillingness to satisfy debts," and DC ¶19(c) "a history of not meeting financial obligations."

Applicant's debts are attributable to recurrent periods of unemployment and underemployment between 1999 and 2008. Faced with so many pressing challenges in finding sustainable work, while completing his college studies and caring for his family's needs, Applicant struggled with his mounting debts.

Applicant's progress to date in regaining control of his finances is encouraging, but still a considerable work in progress that is only recently being addressed. He still is working on addressing his three major judgments and other remaining debts and can provide no estimates as to when he will be able to make any significant headway on two of his still outstanding judgment and the other two debts he acknowledges.

To his credit, Applicant is able to document a settlement arrangement with his largest judgment creditor (creditor 1.a). However, his payment arrangements have only recently been approved and initiated with a good-faith first payment. Further, his settlement agreement contains some very onerous enforcement machinery, should Applicant ever default on any of his agreed \$250 monthly payments.

Based on his evidentiary showing, Applicant's proofs are sufficient to establish some extenuating circumstances associated with his debt accumulations. As a result, MC ¶ 20(b) of the financial considerations guideline, "the conditions that resulted in the behavior 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," has some application to Applicant's circumstances. Applicant's repayment efforts with creditor 1.a and his session with his financial advisor entitle him to some mitigation credit under both MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," and MC ¶ 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." Both of these mitigating conditions have partial application to Applicant's situation.

Full mitigation credit is not available to Applicant, however, based on the facts of this case. Neither Applicant's oral nor written evidence reflect any initiated voluntary repayment efforts in his behalf on his major debts. His only documented payment agreement with individual creditors is encouraging, but not enough at this time to warrant full application of any of the mitigating conditions covered in the financial guideline.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern over applicants with troubled finances is vulnerability to coercion and influence, judgment and trust concerns are explicit in financial cases.

Whole person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent debts. His positive endorsements

from his management team merit considerable praise and commendation. His completed settlement efforts with one of his judgment creditors (creditor 1.a) is encouraging. In balance, though, he has not shown enough tangible effort in addressing his covered debts to mitigate his still delinquent debts and credit him with restored control over his finances.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the limited resources he has had to address them with, and the modest steps he has mounted to address his old debts, it is still too soon to make safe predictive judgments about Applicant's ability to repay his debts and restore his finances to stable levels commensurate with his holding a security clearance. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.b through 1.h. Favorable conclusions warrant with respect to subparagraphs 1.a and 1.i through 1.j

### **Foreign Influence**

By virtue of his birth in Nigeria to parents of Nigerian descent and citizenship, Applicant was endowed with Nigerian citizenship through his parents. This citizenship could not be lost except by express renunciation, approved by the Nigerian Government, which Applicant has never explored. While many of his family members enjoy dual citizenship with the U.S. and Nigeria, they retain presumptively strong ties with their birth country (Nigeria), as does Applicant.

Security concerns are also raised over the presence of Applicant's immediate family (*i.e.*, his parents and brother) and in-laws who are citizens and residents of Nigeria, a country historically plagued by military coups, domestic turmoil, and a poor human rights record. Department Counsel urges security concerns over risks that Applicant's parents, brother and in-laws residing in Nigeria might be subject to undue foreign influence by Nigerian government and military authorities to access classified information in Applicant's possession or control.

Because Applicant's father and immediate family members and in-laws reside (at least part of the time) in Nigeria, they present potential heightened security risks covered by 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," of the foreign influence guideline. The citizenship/residence status of these immediate family members and in-laws in Nigeria pose some potential concerns for Applicant because of the risks of undue foreign influence that could compromise sensitive or classified information under Applicant's possession and/or control.

Due to the paucity of contacts Applicant has historically had with his in-laws, potential risks associated with his in-laws residing in Nigeria must be considerably discounted. Moreover, none of Applicant's immediate family members have any

identified affiliations or contacts with Nigerian officials currently known to be associated with intelligence or military organizations interested in collecting proprietary or sensitive information in the U.S. And from what is known from the presented evidence, none of Applicant's immediate family and in-laws residing in Nigeria have any (a) political affiliations with Nigeria's government or military, (b) history to date of being subjected to any coercion or influence, or (c) indications of any vulnerability to the same.

Applicant's mother is a dual citizen of the U.S. and Nigeria, but resides in the U.S. on the strength of her permanent residence card. Like his mother, his brothers are dual citizens of the U.S. and Nigeria, but maintain permanent residence in the U.S. And while his sisters await their naturalization as U.S. citizens., they, too, remain in the U.S. on the basis of their permanent residency status. Only his father spends substantial time in Nigeria, and he, too, awaits the opportunity to apply for U.S. citizenship.

Nigeria, although a country reported to have a history of military coups and human rights violations, enjoys a non-hostile relationship with the U.S., and is a democratic government with some respect for the rule of law in the areas of foreign trade and commerce. While Nigeria has a documented record of turmoil and kidnaping in its oil-rich Niger Delta region, it generally enjoys stable diplomatic and trade relationships with the U.S.

The AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about Nigeria.

Nigeria remains a non-hostile trading partner of the U.S. and is a country whose democratic institutions are not wholly incompatible with our own traditions and respect for human rights and the rule of law. Unlike the old AGs, the new ones explicitly take into account the country's demonstrated relations with the U.S. as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime involved do matter. Nigeria, while reported to have human rights and insurgency issues in its Niger Delta region, is still a country with no known recent history of government-sponsored hostage taking or disposition for exerting undue influence against family members to obtain either classified information, or unclassified economic and proprietary data.

As for security concerns associated with the presence of Applicant's relatives in Nigeria, any potential heightened risk of a hostage situation or undue foreign influence brought in the hopes of eliciting either classified information or economic or proprietary data out of Applicant through his family members residing in Nigeria is quite remote. Applicant, accordingly, may take advantage of one important mitigating condition: MC 8(a), "the nature of the relationships with foreign persons, the country in which these

persons are located, or the persons or activities of these 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.”

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 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,” has application, too, to Applicant’s situation. Since relocating to the U.S. in 1996, Applicant has demonstrated loyalty, patriotism, and professional commitments to the U.S. Whatever potential conflicts he may have through his dual Nigerian citizenship and contacts with his family members in Nigeria have been more than counterbalanced by his demonstrated U.S. citizenship responsibilities.

Appraising risks associated with Applicant’s dual citizenship status with Nigeria, the presence of Applicant family members in Nigeria, his past family visits to Nigeria, and his regular contacts with these family members, any risk of undue foreign influence on Applicant and/or his parents, siblings, and to an even lesser extent, his in-laws, who reside in Nigeria, would appear to be insubstantial, and clearly not of the magnitude that could make them subject to a heightened security risk of coercion, pressure or compromise under Guideline B.

Whole person assessment also serves to minimize Applicant’s exposure to conflict of interests with his Nigerian family members. Not only is Applicant a naturalized U.S. citizen who received his college training at recognized American colleges following his relocation here, but he has made every effort to work, save, and pursue his financial interests exclusively in the U.S.

In Applicant’s case, any likelihood of coercion, pressure, or influence being brought to bear on any of his immediate family members and in-laws would appear to be minimal. By all reasonable accounts of the presented record, Applicant has no visible conflicts of interest with Nigerian citizen/residents in Nigeria that could be at risk to exploitation or compromise by Nigerian military or intelligence officials. With the exception of his father (who splits time between the U.S. and Nigeria) and his wife’s family members, Applicant’s immediate family members have since joined Applicant in adopting the U.S. as their home country and maintain few contacts in Nigeria. Based on Applicant’s credible accounts, it is unlikely, too, that any of his immediate family members will establish any contacts with Nigerian authorities in the foreseeable future that could create any conflicts of interest for Applicant.

Overall, any potential security concerns attributable to Applicant’s family members and in-laws residing in Nigeria are sufficiently mitigated to permit safe predictive judgments about Applicant’s ability to withstand risks of undue influence attributable to his familial relationships in Nigeria. Favorable conclusions warrant with respect to the allegations covered by sub-paragraphs 2.a through 2.i of Guideline B.

## **Applicant's e-QIP omissions**

Posing potential security concerns, too, are Applicant's omitted active Nigerian passport and traffic-related arrest in the e-QIP he completed in January 2008. He denied any intent to falsify in his answer and affirmatively and credibly explained his misunderstanding of question 17 when answering "no" to the question pertaining to his possession of a Nigerian passport within the last seven years. He attributed his omission of his failure-to-appear arrest to his unawareness of any arrest associated with his traffic offense. His credible explanations enable him to avert inferences of knowing and wilful concealment of his possession of a foreign passport and his arrest record.

From a whole person perspective, Applicant presents as an essentially honest applicant who has made considerable progress in becoming assimilated in his adopted country (the U.S.), with most of his immediate family members (mother, brothers, sisters, and wife), and answered his e-QIP as honestly and completely as he could with his limited understanding of security forms.

Based on Applicant's accepted explanations of his e-QIP omissions and his overall honesty and candor showing, he is able to successfully refute the allegations of deliberate falsification in the SOR. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 3.a and 3.b of Guideline E.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E2(a) of the Adjudicative Process of Enclosure 2 of the Directive.

## **Formal Findings**

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

<b>GUIDELINE F (FINANCIAL CONSIDERATIONS):</b>	<b>AGAINST APPLICANT</b>
Subparas: 1.b through 1.h:	Against Applicant
Subparas. 1.a and 1i through 1.j:	For Applicant
<b>GUIDELINE B: (FOREIGN INFLUENCE):</b>	<b>FOR APPLICANT</b>
Subparas. 2.a through 2.i::	For Applicant
<b>GUIDELINE E (PERSONAL CONDUCT):</b>	<b>FOR APPLICANT</b>
Subparas. 3.a and 3.b:	For Applicant



## **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge