



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



In the matter of:)	
)	
)	ISCR Case No. 09-00259
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: Pro Se

November 24, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance questionnaire on August 28, 2008. On July 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence, for Applicant. 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On August 15, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department counsel was prepared to proceed on September 21, 2009. The case was assigned to me on September 28, 2009. On October 1, 2009, a Notice of Hearing was issued scheduling the hearing for October 21, 2009. The hearing was held as scheduled. The government offered Government Exhibits (Gov) 1 - 4, which were admitted without objection. The government requested that administrative notice be taken of eight documents with one document being a memorandum which summarizes key points in the administrative notice documents.

The documents were marked as Administrative Notice Document (Admin Not) I - VIII without objection. The memorandum is Admin Not VIII. Applicant testified and submitted four exhibits which were admitted as Applicant Exhibits (AE) A - D without objection. DOHA received the transcript of hearing on October 29, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Administrative Notice

The following information is from the administrative notice documents:

Nigeria is a federal republic located in western Africa. Since gaining independence from Britain in 1960, Nigeria has faced intermittent political turmoil and economic crisis. Nigerian political life has been scarred by conflict along both ethnic and geographic lines and dominated by military coups and long military-imposed transition programs rather than civilian rule. The military has ruled Nigeria for approximately 28 of its 47 years since independence. Nigeria transitioned to civilian governance in May 1999. (Admin Not I; II)

Since the restoration of basic democracy in Nigeria in 1999, the bilateral relationship with the United States has continued to improve, and cooperation of many important foreign policy goals, such as regional peacekeeping, has been excellent. The Nigerian government lent strong diplomatic support to U.S. Government anti-terrorism efforts in the aftermath of the September 11, 2001, terrorist attacks. The Nigerian government has both condemned terrorist attacks and supported military action against the Taliban and Al Qaida. The Nigerian government plays a leading role in forging an anti-terrorism consensus among states in Sub-Saharan Africa. An estimated one million Nigerians and Nigerian-Americans live, study, and work in the U.S., while over 25,000 Americans live and work in Nigeria. (Admin Not I at 12) Nigeria is one of the United States' key strategic partners in Africa. The country is Africa's largest producer of oil, and is the United States' fifth largest oil provider. (Admin Not II, Summary)

Nigeria is Africa's most populous country with over 250 ethnic groups and its people suffer from pervasive poverty. Ethnic and religious clashes in parts of the country are common. Nigeria has pursued a policy of developing domestic military production capabilities. (Admin Not I; II)

The U.S. State Department issued a travel warning recommending that United States citizens avoid travel to the Niger Delta states of Bayelsa, Delta, and Rivers because of continued risks of kidnapping, robbery, and other armed attacks in these areas. The Nigerian government considers militant camps and surrounding areas in the Delta region states of Delta, Bayelsa, Akwa Ibom, and Rivers to be conflict areas. Travel by foreigners to these areas without prior consultation and coordination with local security authorities is not recommended, as the Nigerian Government may see this activity as inappropriate and potentially illegal. (Admin Not V)

The Nigerian Government's human rights record is poor, and the government continues to commit serious human rights abuses, including extrajudicial killings and impunity of abuses by security forces, torture, arbitrary arrest, and judicial corruption. Nigerian police and other law enforcement officials do not always inform the U.S. Embassy of Consulate immediately of the arrest or detention of a U.S. citizen. (Admin Not III; IV)

Findings of Fact

In his Answer to the SOR, dated August 15, 2009, Applicant admits to all the SOR allegations.

Applicant is a 49-year-old systems administrator and information technology (IT) security manager employed with a Department of Defense contractor. He has worked for the same employer since June 2007. He became a security manager in October 2007. This is his first time applying for a Department of Defense security clearance. In June 2003, he applied for a clearance with the State Department. The clearance was denied because of financial and other issues. He has a bachelor of science degree in physical science/aerospace engineering. He is twice divorced and has four sons, ages 30, 26, 18 and 14. (Tr at 6-7, 56-58, 64-66; Gov 1.)

Applicant was born and raised in Nigeria. He attended elementary and high school in Nigeria. He also took some college courses at a Nigerian University. In 1982, he moved to the U.S. as a university student. He became a U.S. citizen on September 9, 1993 and received a U.S. passport on November 17, 1993. His Nigerian passport expired on February 27, 2005. Applicant provided a sworn affidavit that he never intends to renew his Nigerian passport in the future and he intends to renounce his Nigerian citizenship. (Tr at 16-19, 28, 55-56; AE D)

He married his first wife in September 1987. She was a U.S. citizen. One son was born of the marriage in April 1990. They divorced in January 1993. He married his second wife in March 1995. She was a Nigerian citizen who he met in the U.S. One son was born of the marriage in May 1995. They divorced in March 2005. (Gov 1, Section 13; Gov 4)

His two oldest sons were born out of wedlock in Nigeria in 1979 and in February 1983. His oldest son was born in Nigeria but is a naturalized United States citizen. His second oldest son is a Nigerian citizen. (Tr at 47, 66; Gov 1, section 15; see *also* Gov 4) He moved to the United States when he was 16 to attend high school. He encountered legal problems and developed some mental health issues. Applicant was unable to care for him because of his work schedule and sent him to live with his brother in Nigeria. His second oldest son still resides in Nigeria. He earned a two year degree in computer science but is currently unemployed. (Tr at 47-49, 66-67) Applicant's other three sons are United States citizens. He has custody of his youngest son, age 14. He attends boarding school in New England. His oldest son lives with him and works at a restaurant. He has had no contact with his 18-year-old son. (Tr at 59, 63-66; Gov 4)

Applicant's mother is 78-years-old. She is a permanent United States resident and lives with Applicant when she is in the United States. She has been a permanent U.S. resident for 13 years. Every two or three years she travels to Nigeria and lives there for several months visiting family members. She cannot read or write in any language and does not speak English so she gets bored in the United States. She has been in Nigeria since August 2009 and is likely to return to the United States in December 2009. Applicant supports his mother when she is living with him in the United States and sends her money when she travels to Nigeria. (Tr at 29-30, 33, 41-43)

Applicant has three sisters and one brother who are citizens of and reside in Nigeria. He contacts them on average of once a month. His brother is a self-employed mechanic. He also buys and sells cars in Nigeria. Applicant speaks with him over the telephone at least once a month. One sister is a homemaker. Her husband is a property manager. He contacts this sister once a week. Another sister is a homemaker. Her husband works in the transportation field. He contacts her about once a month. One sister worked for the Federal Inland Revenue Service as an auditor. The Federal Inland Revenue Service is the equivalent of the Internal Revenue Service in the United States. She was laid off a few years ago without receiving her retirement. Her husband was employed as an auditor with the Nigerian Airport Authority. He was fired after he refused to take a bribe. (Tr at 30; Gov 2 at 3, 9; Gov 4)

During the hearing, Applicant testified he is in contact with his siblings more when his mother lives with him because they call her more often. (Tr at 50-52) None of his siblings currently work for the Nigerian government or receive pensions from the Nigerian government. (Tr at 53) Although not alleged in the SOR, Applicant has a brother and sister who are Nigerian citizens, residing in the United Kingdom. His brother is a security guard. His sister is a nurse. (Gov 2 at 3)

Applicant's uncle is the king of the Irolu-Remo Ogun state in Nigeria. Applicant says his uncle is the king of the village where he was born, a village of about 3000 people. His position is ceremonial as opposed to governmental. Applicant states he is wealthy. He owns 20 -30 rental properties. Applicant's last contact with his uncle was in 2000. He does not communicate with his uncle because he believes that his uncle and his other uncles treat his mother poorly. While growing up, she was not allowed to get an education and had to wait on her brothers. They do not take care of her. (Tr at 38, 44, 62-64)

During his divorce proceedings from his second wife in 2003, Applicant stated that he was a crown prince born into a royal family in Nigeria, apparently to gain some sort of leverage in a hotly contested divorce. He testified during the hearing that he does not have a royal title. Representing himself as a crown prince during the divorce proceedings was a mistake and did not get him anywhere in the divorce proceedings. He still has child support issues with his second wife. (Tr at 45-46; Gov 3; Gov 4)

Applicant states that the United States is his country and he intends to work, retire, and live the rest of his life here. (Tr at 32) The last time he traveled to Nigeria was

in 2001. He does not intend to travel to Nigeria in the future now that his mother lives with him. (Tr at 54-56)

Applicant's division chief notes Applicant was hired in June 2007, as a senior system administrator. Applicant's stellar performance resulted in an appointment as the IT security manager. Applicant demonstrates a sound work ethic and zeal for his duties and responsibilities. He has lead his team to keep computer-related vulnerabilities to a minimum while allowing desktop computer services to be provisioned with the highest possible productivity for customers. His commitment to accountability, responsibility, ethics, and integrity would make him an excellent addition to any organization. (AE A)

The technical operations manager has worked with Applicant for over two years. As a senior systems administrator, Applicant has complete access to almost 4000 computer systems. During his tenure, Applicant has done nothing to call that trust into question. As the IT security manager, Applicant is aware of and responds to every vulnerability that affects the company computer systems. (AE B)

An information security architect for the company wrote a letter indicating that Applicant has worked in the cubicle next to him for the past two years. He states that Applicant always maintains a professional demeanor and is helpful to associates. He is conscientious when coordinating various information security activities for the contractor. He and Applicant have different jobs and responsibilities and have only occasional professional interaction. However, Applicant has been knowledgeable and cooperative in those professional experiences. Applicant demonstrates honesty and integrity. (AE C)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will 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.

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.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

The security concern relating to the guideline for Foreign Influence is set out in AG ¶6:

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 United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline notes several disqualifying conditions that could raise security concerns. Of the Foreign Influence Disqualifying Conditions (FI DC), the following apply to Applicant’s case:

FI DC ¶ 7(a) (*contact with a 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);

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)

Applicant's 26-year-old son, three sisters, and one brother are citizens and residents of Nigeria. An additional concern is raised because Applicant's mother travels to Nigeria and stays there for extended periods of time. She is currently in Nigeria. Applicant telephones his family members at least once a month.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an Applicant has contacts with that relative, this factor alone is sufficient to create a heightened risk for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001)

In this case, FI DC ¶ 7(a) and FI DC ¶ 7(b) apply because Applicant has contacts with and connections to his family members in Nigeria. Most of his siblings live in Nigeria. He has regular contact with his family members which creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. However, Applicant's ties to his extended family members who are citizens of and reside in Nigeria, including his uncle who is the current ruling king of Irolu-Remo Ogun region, are not nearly as strong. His uncle, though wealthy, holds a ceremonial position in the small village where Applicant grew up. Applicant has had no contact with this uncle since 2000. On another note, the fact that Applicant's sister retired from the Nigerian Inland Revenue Service is unlikely to create a potential for heightened risk for Applicant. She was not in a high-level position to raise a higher concern. She does not receive retirement benefits from the government.

Three of the six mitigating conditions under the Foreign Influence guideline (FI MC) may apply to the facts and circumstances of this case:

FI MC ¶ 8(a) (the nature of the relationship 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, or 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)

FI MC ¶ 8(c) (contact or communication with foreign citizens is so casual and infrequent that there is little likelihood it could create a risk of foreign influence or exploitation)

FI MC ¶ 8(a) and FI MC ¶ 8(c) do not apply because Applicant's relationships with his nuclear-family members in Nigeria are of sufficient magnitude or strength to negate these two mitigating conditions. There is at least a remote or slight possibility that dangerous elements within Nigeria could attempt to use his family members to coerce or pressure Applicant.

FI MC ¶ 8(b) applies. Applicant's deep and longstanding relationships and loyalties in the United States support the conclusion that he can be expected to resolve any conflict in favor of the United States interest. Applicant moved to the United States in 1982. He earned his college degree at a U.S. university. He became a U.S. citizen in September 1993. He has lived and worked in the United States for 27 years. He does not possess a valid foreign passport. He intends to live and work in the United States for the rest of his life. He has not traveled to Nigeria since 2001 – over eight years ago. Three of his children are U.S. citizens and reside in the United States. Applicant's mother lives with him most of the time. His strongest ties are to the United States.

Applicant's deep and longstanding relationships and loyalties in the United States outweigh any potential for conflict because of Applicant's relationship to his immediate relative who are citizens of and reside in Nigeria. The Guideline B concern is mitigated.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered the totality of Applicant's family ties to Nigeria, a country that is an ally of the United States but has significant internal problems.

I considered that Applicant is highly regarded at his current place of employment. He was promoted within four months of accepting the position. He has lived in the United States for over 27 of his 49 years. He became a U.S. citizen in 1993. He has not visited Nigeria in over eight years. Three of his four sons live and reside in the U.S. While Applicant's family members living in Nigeria raise a potential security threat due to the very nature of familial relationships, Applicant's significant ties to the United States mitigate the security threat. His deep and longstanding relationships and loyalties in the United States strongly support the conclusion that Applicant would resolve any attempt to exert pressure, coercion, exploitation, or duress in favor of the United States.

Guideline B is a security concern that affects Applicants through no fault of their own. The current nature of the Nigerian government makes it a substantial burden to mitigate the concerns raised under foreign influence. In Applicant's case, his significant personal relationships and contacts within the United States outweigh the concerns raised by having relatives who are citizens of and reside in Nigeria. Overall, the record evidence leaves no questions or doubts as to Applicant's eligibility and suitability for a security clearance. Foreign Influence security concerns are mitigated.

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
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 national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge