



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



In the matter of:)
)
-----) ISCR Case No. 09-07467
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

March 9, 2011

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the foreign influence security concern posed by his foreign relatives, and the financial considerations security concerns generated by his history of financial difficulties. Clearance is granted.

Statement of the Case

On May 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence, and Guideline F, financial considerations. 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 adjudicative guidelines (AG).

Applicant answered the SOR on June 28, 2010, denying all of the allegations except subparagraphs 1.c and 1.d. He requested a hearing, and the case was assigned

to me on October 7, 2010. On November 17, 2010, a notice of hearing was issued scheduling the case for December 9, 2010. The hearing was conducted as scheduled. I admitted nine Government exhibits marked as Government Exhibits (GE) 1 through 9, and eight Applicant exhibits marked as Applicant's Exhibits (AE) A through H. Also, I received Applicant's testimony. At Department Counsel's request, I took administrative notice of facts about Nigeria contained in 12 documents marked as Hearing Exhibits (HE) I through XII.

At the end of the hearing, I left the record open, at Applicant's request, to allow him to submit additional exhibits. Within the time allotted, he submitted eight additional exhibits marked AE I through P that I incorporated into the record.

Findings of Fact

Applicant is a 42-year-old married man with three children, ages ten, nine, and six. He has a bachelor of science degree in economics, earned in 1990 from a university in Nigeria, his native country. (Tr. 55) Applicant immigrated to the United States in 1994 and has been living here since then. He became a naturalized U.S. citizen in May 2001. (GE 3 at 2) In 2001, he returned to school, earning a master's degree in information security and database administration. (Tr. 55)

Since 2008, Applicant has been working as an information assurance analyst for a defense contractor. (Tr. 79) With the exception of a two-year period between 2004 and 2006 when he worked as a realtor, Applicant has been working in the information security field since 1998. (GE 1 at 16-25)

Applicant's mother is a naturalized U.S. citizen living in the United States, and his father is deceased. Applicant has five brothers, one sister, and two half-brothers. Four of his brothers are naturalized U.S. citizens and residents, as is his sister. His remaining brother is a Nigerian resident who lives in the United States with his family. They are permanent U.S. residents. (AE B)

Both of Applicant's half-brothers are Nigerian citizens and residents. One of his half-brothers is married with children. Applicant's mother is petitioning for his half-brother and family to become U.S. citizens. (AE G; Tr. 46) Applicant does not know what his half-brother does for a living. (AE 3 at 5) He went to his half-brother's wedding in March 2010. Applicant does not know where his half-brother intends to live when he immigrates to the United States. (Tr. 179)

Applicant knows little about his other half-brother, and has only seen him five times. (Tr. 62) He knows that this half-brother was studying to be a teacher, but does not know whether he is actually working as a teacher. Also, Applicant does not know where this half-brother lives. (Tr. 62)

Applicant's brother-in-law and his brother-in-law's wife are Nigerian citizens and residents. His brother-in-law is vice president of a bank, and Applicant's sister-in-law is

a bank manager. (Tr. 64) Applicant speaks with them three to five times per year during holidays or when there is a death in the family. As bankers, they enjoy a “comfortable living.” (Tr. 181)

Nigeria is a federal republic located in western Africa. Since gaining independence from Great Britain, it has undergone significant political instability marked by periodic civil wars, ethnic turmoil, and military dictatorships. (*See generally*, HE II) Although Nigeria transitioned to a civil republic in 1999, it is still plagued by corruption and rampant poverty. Moreover, its predominantly Islamic north is becoming increasingly radicalized. (*Id.* at 24)

Nigeria’s relationship with the United States has improved since it became a democratic republic in 1999. (HE I at 10) It has played a leading role in forging an anti-terrorism consensus within sub-Saharan Africa. (*Id.*) The United States is Nigeria’s largest foreign investor. U.S. assistance focuses on development aid, the promotion of the rule of law, and the continuing development of a modern market economy. (*Id.* at 11)

Although Nigeria has made some progress in its evolution toward a representative democracy, its human rights record continues to be poor. (HE V at 1) Over the years, there were numerous instances when elements of the security forces acted outside of the law, beating journalists, torturing suspects, and using excessive force against civilians. (*Id.*) The judicial system remains vulnerable to coercion through bribes, and international observers characterized recent elections as fraudulent. (*Id.* at 18)

In 2000, Applicant purchased a condominium for \$145,000. (Tr. 96) He and his family lived there for five years before moving to a single family home in November 2005. (Tr. 96) Applicant was unable to sell the condominium before moving. This impeded his ability to qualify for a loan to finance the new home. Consequently, Applicant and his wife decided that she purchase the new home solely in her name and apply for financing without Applicant’s assistance.¹ (Tr. 45)

The bank approved Applicant’s wife’s loan, facilitating the purchase of the home. The amount of the loan was \$500,000. At the time, Applicant’s wife’s salary averaged between \$40,000 and \$60,000. (Tr. 196) Within a year after moving into the \$500,000 home, Applicant sold the condominium. Although he sold it for nearly \$200,000 more than his original purchase price, he made a nominal profit because of two refinances over the years, and the corresponding transactional costs.² (Tr. 99)

In September 2006, Applicant’s father died. (GE 1 at 50) The costs related to the funeral, including travel to Nigeria, strained Applicant’s finances.

¹Applicant financed the condominium without his wife’s assistance.

²Applicant used the cash from the refinancing for significant repairs and home improvements.

In November 2006, some time after selling his condominium, Applicant and a friend purchased an investment property for \$140,000. (Tr. 96) They financed the home with a \$2,000 down payment, and two mortgages, as listed in SOR subparagraphs 2.b and 2.d. (Tr. 137) Before the housing bust, splitting the purchase price of a home into two mortgages was a common strategy that banks employed to enable buyers to circumvent having to pay mortgage insurance, or otherwise qualify for the mortgage. (Tr. 137)

Under Applicant's agreement with his friend, the friend was to move into the investment property and pay rent to Applicant that would offset the mortgage. (Tr. 111; AE A at 3) Shortly after moving in, Applicant's friend became unable to pay the rent. At or about the time Applicant's friend stopped paying the rent, the real estate market crashed. Consequently, Applicant was unable to sell the property.

In 2007, Applicant's wife was laid off from her job, and was subsequently unemployed for approximately 16 months. (Tr. 87-88) Applicant was now solely responsible for the \$4,000 monthly mortgage payment.³ Applicant began to fall behind on his debts.

In December 2007, Applicant and his family moved to an apartment. (Tr. 214) The apartment's rental payments were approximately \$2,500 less than the mortgage payment on the home from where he moved. (AE L) Applicant and his wife were unable to sell their home before moving. (Tr. 105) Subsequently, it went into foreclosure. Applicant does not know whether the house was sold through the foreclosure process. Also, he does not know whether his wife owes a deficiency. (Tr. 105-107)

Applicant unsuccessfully sought a loan modification with the bank that held the investment property mortgages. Subsequently, the bank foreclosed Applicant's investment property in June 2009. (GE 2) Since then, the bank has resold the property and informed Applicant no deficiency is owed on either of the two mortgages. (Tr. 141, 222; AE J)

The SOR lists three additional debts, subparagraphs 2.a, 2.c, and 2.e. SOR subparagraph 2.a is a debt owed to a credit union in the amount of \$390. Applicant satisfied this debt in 2004. (AE D) The creditor listed in SOR subparagraph 2.c is a multilevel marketing company. (Tr. 224) Applicant purchased a start-up package from this company about ten years ago for approximately \$270 with the understanding that he could return the materials within 30 days if he was not satisfied. (Tr. 224) Applicant contends he returned the product, but never received his money. When Applicant discovered the bill was listed as delinquent on his credit report, he disputed it with the credit reporting agency. (Tr. 227) He did not provide documentary evidence of his dispute.

³Although Applicant's name was not on the title to the home and he was not responsible for it under the mortgage terms, he shared the responsibility of making the mortgage payments with his wife.

The creditor listed in SOR subparagraph 2.e is a collection agent for a phone company. The bill totals \$850. (Tr. 227) Applicant disputed the bill, and unsuccessfully attempted to settle it for a lesser amount. (Tr. 229) The bill has been outstanding for eight years.

In August 2009, Applicant completed a six-week financial counseling course. (AE E) Through the course, he learned how to negotiate expenses with his creditors, and to develop a budget plan that includes money set aside for emergencies and “pocket money” for each child. (AE L) Applicant also learned how to distinguish liabilities from assets and to work toward maximizing his assets and minimizing his liabilities. (Tr. 237) Consistent with the lessons learned through the counseling course, Applicant saves \$150 monthly in a regular savings account and \$430 monthly through a 401k plan. (AE L) After expenses, Applicant has approximately \$600 remaining each month. (Tr. 76, 231) He earns approximately \$71,000 per year. (AE N)

Since 2009, Applicant’s wife has been working part-time. He did not include her income in his budget. (Tr. 232) Through Applicant’s budget, he sets aside \$200 each month for his wife. (AE L)

Applicant is active in the community. Through his church, he provides job counseling to unemployed people, critiquing their resumes, and offering job search advice. (Tr. 238) Also, he periodically volunteers at homeless shelters. (Tr. 239)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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.”

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 for obtaining a favorable security decision.

Analysis

Guideline B, Foreign Influence

The security concern under this guideline is set forth, as follows:

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. (AG ¶ 6)

Although Applicant’s brother, sister-in-law, and niece are Nigerian citizens, they live in the United States. There is no record evidence that Nigeria either possesses an intelligence infrastructure significant enough to target citizens beyond its borders, or is attempting to develop such an intelligence infrastructure. I resolve SOR subparagraph 1.a in for Applicant.

Nigeria is a staunch U.S. ally in confronting terrorism, and is steadily evolving into a representative democracy with a developing market economy. However, it remains plagued by rampant corruption, ethnic strife, and rising Islamic radicalism. Disqualifying Condition (DC) AG ¶ 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,” applies to Applicant’s citizen, resident Nigerian relatives.

Applicant knows one of his half-brothers well enough to have attended his wedding. However, he does not know what this half-brother does for a living or where his half-brother intends to live after he immigrates to the United States. Applicant has no relationship with his other half-brother, having only seen him five times in his life. Mitigating Condition (MC) AG ¶ 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,” applies to Applicant’s relationships with his half-brothers or their respective families.

Applicant keeps in touch with his in-laws three to five times per year. The context of their communication is limited to special occasions, holidays, and deaths in the

family. MC AG ¶ 8(c) applies to these relationships, also. Applicant has mitigated the foreign influence security concern.

Financial Considerations

Under this guideline, the “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.” (AG ¶ 18) Applicant’s history of financial problems triggers the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.” Given the nominal amount of the debt listed in SOR subparagraph 2.a and the fact Applicant satisfied it nearly ten years ago, I conclude it does not pose a security concern.

Of the four remaining SOR debts, two resulted in the foreclosure of an investment property, and two, though disputed, remain outstanding. Although Applicant’s decision to purchase an investment property with a friend under the circumstances described at the hearing was not a good one, it was not irresponsible. Rather, it was a good-faith business decision that proved to be unsuccessful. Applicant tried to cut his losses by selling the property, but was unable to do so because of the downturn in the real estate market. Applicant’s ability to meet the mortgage payments on this investment property was further compounded when his wife lost her job.

Applicant made a significant lifestyle change by moving from his primary residence, a single family home, to live in a cheaper apartment. In doing so, he generated savings of approximately \$2,500 monthly. Applicant completed a comprehensive financial counseling course and now maintains a budget. Under this budget, he saves money each month and has approximately \$600 of monthly income remaining. MC AG 20 (b), “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected problems,” and the individual acted responsibly under the circumstances,” applies.

Although Applicant does not owe a deficiency on either mortgage, he did not satisfy them. Rather, the bank resold the investment property and informed him that he owed no deficiency. Consequently, MC AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” does not apply.

Applicant sought the help of a credit counselor and organized a budget that enables him both to have significant after-expense monthly income and money to set aside for savings. The first prong of MC AG ¶ 20(c), “the person has received counseling for the problem . . .” applies.

Applicant’s wife was unable to sell their home before they moved to an apartment in December 2007. Applicant did not know if the bank had foreclosed the mortgage on this home, or if his wife owed a deficiency. Although this mortgage was not in

Applicant's name and was not alleged in the SOR, both Applicant and his wife were responsible for making the mortgage payments. Consequently, the status of this mortgage is relevant in assessing Applicant's financial stability regardless of whether the mortgage was in his name, or listed on the SOR.

Applicant is currently supporting his entire family on his income alone, and still has ample remaining discretionary income to make ends meet. Consequently, the uncertain status of his wife's mortgage has minimal potential to negatively affect his financial well-being. I conclude the second prong of MC AG ¶ 20(c), ". . . there are clear indications that the problem is being resolved or is under control," applies.

Applicant provided no evidence supporting the basis of his dispute of the delinquencies listed in SOR subparagraphs 2.c and 2.e. MC AG ¶ 20(e), "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue," does not apply. The negative inference generated by this failure is minimized by the nominal amount of these debts in comparison to Applicant's monthly disposable income and his good-faith effort to organize his finances. Applicant has mitigated the financial considerations security concern.

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.

The foreign influence security concern was mitigated by the casual and infrequent nature of Applicant's contacts with his relatives remaining in Nigeria, and bears no further discussion. As for Applicant's past financial problems, he contended that circumstances beyond his control contributed to them, but frankly acknowledged they were not entirely to blame. Taking responsibility for his money management problems, Applicant enrolled in, and successfully completed a credit counseling course. Using lessons learned from the financial counseling course, Applicant maintains a detailed budget. He has ample, monthly discretionary income.

Upon evaluating this case in the context of the whole-person concept, particularly the presence of rehabilitation, and the minimal likelihood of continuation or recurrence, I conclude Applicant has mitigated the financial consideration security concerns.

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
Subparagraphs 1.a - 1.d:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a-2.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.

MARC E. CURRY
Administrative Judge