



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



In the matter of:)	
)	
)	ISCR Case No. 10-05707
)	
Applicant for Security Clearance)	

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: Amber K. Litchfield, Esq.

August 31, 2011

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline B, Foreign Influence, and Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On February 22, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B and F. 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on March 19, 2011, and requested a hearing before an administrative judge. The case was assigned to me on May 20, 2011. DOHA issued a Notice of Hearing on June 8, 2011. I convened the hearing as scheduled on August 9,

2011. The Government offered Exhibits (GE) 1 through 7. Applicant did not object and they were admitted into evidence. The Government requested administrative notice be taken of Hearing Exhibit (HE) I. I granted the request. Applicant testified on his own behalf. He offered Exhibit (AE) A, which was admitted into evidence without objection. The record was held open until August 25, 2011, to allow submission of additional documents. Applicant submitted AE B through F. HE II is Department Counsel's response and indicating he had no objections to the exhibits. They were admitted into evidence. DOHA received the hearing transcript (Tr.) on August 19, 2011.

Findings of Fact

Applicant admitted all of the allegations in the SOR except ¶ 1.a and ¶ 1.c which he partially denied. I incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 44 years old. He married in 1996. From 1997 to 2000, he and his wife applied through a U. S. State Department Diversity Lottery Program to immigrate to the United States. In 2000 they were selected, and in 2001 they emigrated from Nigeria with their two children. After completing the required time period in 2007, he and his family became naturalized U.S. citizens. Two more children were born to them in the United States. His children are 15, 11, 8, and 4 years old. His wife works as a licensed practical nurse. Applicant has worked for the same federal employer for ten years as a security officer. He also works part-time for another company in the same capacity. Applicant had a background check before he immigrated and had another when he began work for his employer.¹

Applicant decided to immigrate to the United States because of the opportunities that are available, to provide a better future for his family, and for religious freedom. His intention always was to become a U.S. citizen. He left Nigeria because he was dissatisfied with the corruption of its leaders. When he was in Nigeria he worked as a technical officer for a local government, and was responsible for maintaining building facilities. This was not a political position. He never served in the Nigerian military.²

Applicant returned to Nigeria one time, in 2004, to visit his mother and other relatives. He was not yet a U.S. citizen, and he used his Nigerian passport. Once he became a U.S. citizen he obtained a U.S. passport. His Nigerian passport expired in August 2010, and he did not renew it. He last voted in Nigeria in 1999. He has no rights or privileges in Nigeria. He does not intend to return to Nigeria, except perhaps to visit his family. His total loyalty and allegiance is to the United States where he works and has made a good life for his family. Applicant retained his expired Nigerian passport. Nigeria does not recognize dual citizenship. In an abundance of caution, Applicant is

¹ Tr. 21-27, 32-34, 97-98, 107, 141.

² Tr. 25-31.

willing to renounce any citizenship ties he may have with Nigeria. He is loyal only to the United States.³

Applicant's father is deceased. His mother is 82 years old. She is a citizen and resident of Nigeria. He last visited her in 2004. He contacts her by telephone about once every two months. She does not work. He occasionally sends his mother money to help her.⁴

Applicant's has a sister who lived with him in the United States. She moved from his house to her own residence in October 2010. She is a citizen of Nigeria, but continues to reside in the United States. She has permanent resident status in the United States. He has regular contact with his sister. She works as a nursing assistant in a nursing home. She is 50 years old and came to the United States in 2008. Her son, who is a U.S. citizen, is sponsoring her. He also was selected by lottery to immigrate to the United States. He served for four years in the U.S. military. She has two other children living in Nigeria. She hopes to sponsor them after she becomes a U.S. citizen.⁵

Applicant has another sister who is a citizen and resident of Nigeria. She is married, and she and her husband work in the saw mill business. They do not have any affiliation with the Nigerian government. Applicant talks to her about once every two months. The last time he visited her was in 2004 when he returned to Nigeria.⁶

Applicant's parents-in-law are citizens and residents of Nigeria. They are both retired. They do not receive a pension from the government. Applicant and his wife speak to them once every one to two months.⁷

Applicant and his wife alternate sending money to his mother and her parents. They send \$200 to \$300 a month. On one occasion Applicant sent his sister in Nigeria \$500, when she had a financial problem. He occasionally sends his nephews some money.⁸

Applicant does not have any financial assets in Nigeria. In 2005, Applicant and his wife purchased a house for \$395,000. With their combined incomes they could afford the mortgage payments of \$2,500. They had two loans to finance the house. They relied on assurances by their real estate agent and loan officer that the house would appreciate, and in two years they would be able to refinance their loan, and the

³ Tr. 31-32, 40-41, 98-103, 107, 142.

⁴ Tr. 38-39, 108-110, 121.

⁵ Tr. 34-36, 110-116.

⁶ Tr. 36-38, 116-117.

⁷ Tr. 39-41, 118, 121.

⁸ Tr. 96-97.

mortgage payments would decrease. He did not receive the loan papers until the day of closing and was told he had to sign them at that time or lose the opportunity to purchase the house. The loan was an adjustable rate mortgage that for the first two years only interest was paid. In January 2007, Applicant's mortgage payment increased to \$3,800. At the same time, Applicant's wife had to stop working because she was pregnant. Applicant made some partial payments on the house until he stopped making any payments in late 2007.⁹

Applicant contacted the mortgage company about modifying the loan and was advised they could not do anything. The loan also had a prepayment penalty. The loan company was unwilling to work with him to renegotiate the loan. He was unable to pay the mortgage. He later received a letter from the mortgage company offering him the option of doing a short-sale or refinancing the loan. He was subsequently told neither was a viable option. He was unable to refinance the loan because the house had decreased in value. The house was foreclosed. He later received notice from a court that the house had been sold at auction. In October 2008, Applicant and his family moved out of the house.¹⁰

When the house was foreclosed and sold at auction, Applicant assumed he no longer had any financial obligations, until he received a letter from the mortgage company holding the second mortgage. He was told he owed approximately \$80,000. The original mortgage had a deficiency, but the creditor is not pursuing it. The second mortgage eventually was charged-off and was sold to a collection company. Applicant retained an attorney to help him resolve this debt.¹¹

The debt in SOR ¶ 1.a (\$24,578) is for the second mortgage.¹² Applicant's attorney is negotiating a settlement on this debt. She has been working with the creditor and is waiting for a written acceptance to her settlement offer. The settlement will likely be between \$500 and \$3,000, which Applicant can afford to pay. The debt in SOR ¶ 1.b (\$41,331) is the deficiency on the first mortgage. The creditor is not pursuing the deficiency.¹³

Applicant has never defaulted on any loans or debts, other than the mortgages alleged. He works 72 hours a week at two jobs. He currently grosses approximately \$93,000. His wife has resumed working part-time as a licensed practical nurse and grosses about \$35,000. They have credit cards that they pay on time. Applicant has

⁹ Tr. 41-47, 122-129.

¹⁰ Tr. 47-63, 129-132.

¹¹ Tr. 51-57, 63-68.

¹² The balance has increased to approximately \$33,000.

¹³ Tr. 68-75.

increased his payments on his credit cards and eliminated some of the balances. He and his wife save for their children's future.¹⁴

Applicant credibly testified that he unwittingly relied on the misrepresentations made to him by his real estate agent and loan officer. He admitted he did not understand the documents he signed. He now realizes that he should have sought assistance. He is committed to being more diligent in the future before undertaking large financial transactions. Applicant and his wife live within their means.¹⁵

Nigeria¹⁶

Nigeria is a federal republic located in western Africa. It gained its independence from Britain in 1960. Since then it has faced intermittent political turmoil and economic crisis. There is conflict along ethnic and geographical lines, and there have been military coups and long military imposed transition programs rather than civilian rule. Since its independence the military has ruled Nigeria for approximately 28 of the 51 years.

Nigeria is Africa's most populous country, and there is pervasive poverty. Ethnic and religious clashes are common. The dominant ethnic group in the northern two-thirds of the country is Hausa-Fulani, most of whom are Muslims, and the Yoruba people, about half of whom are Christian and half Muslim, predominate the Southwest. Nigeria pursues a policy of developing military production capabilities. Before the lifting of sanctions by many Western nations, Nigeria turned to China, Russia, North Korea, and India for the purchase of military equipment and training.

The United States is Nigeria's largest trading partner. Oil imports from Nigeria to the United States account for 11% of U.S. oil imports. The United States is the largest foreign investor in Nigeria, and U.S. investment is mostly in mining and petroleum.

Nigeria has provided strong diplomatic support to U.S. Government counter-terrorism efforts. An estimated one million Nigerians and Nigerian Americans live, study, and work in the United States, and another 25,000 Americans live and work in Nigeria.

The U.S. Department of State Travel Warning recommends avoiding travel to certain areas of Nigeria due to the risk of kidnapping, robbery, and other armed attacks. In 2010, the U.S. Embassy issued a warning informing government personnel to defer travel to states experiencing violence in the aftermath of the presidential election. There have been more frequent attacks in Nigeria's northern states. In 2009, there were numerous warnings regarding the threat of violence and potential attacks against U.S. citizens and in the vicinity of the U.S. Consulate General.

¹⁴ Tr. 75-94, 133-140.

¹⁵ *Id.*

¹⁶ HE I and the supporting documents.

The Nigerian Government human rights record is poor, and the government at all levels continues to commit serious human rights abuses, to include: extrajudicial killings and impunity of abuses by security forces, torture, arbitrary arrest, and judicial corruption. In addition, police raid homes without warrants, and security forces have beaten, detained, and harassed journalists. Nigerian police and other law enforcement do not always inform the U.S. Embassy or Consulate immediately of the arrest or detention of a U.S. citizen.

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 are used 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation of 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

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government 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 ¶ 7 describes disqualifying conditions that could raise a security concern. I have considered all of them and the following two are potentially applicable:

(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;

(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; and

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

AG ¶¶ 7(a), 7(b), 7(d) require evidence of a “heightened risk.” The “heightened risk” necessary to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The

totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States."¹⁷

Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security."¹⁸ Friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, or the country is known to conduct intelligence operations against the U.S. Nigeria's poor human rights record, recent threat of violence against U.S. citizens, and intermittent political turmoil create a heightened risk.

Applicant's mother, sister, and parents-in-law are citizens and residents of Nigeria. He has another sister who is a citizen of Nigeria and a resident of the United States. She no longer lives with Applicant and his wife. These facts potentially create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and also create a potential conflict of interest. I find AG ¶¶ 7(a), 7(b), and 7(c) apply. Applicant's wife is a citizen and resident of the United States and her relationship with Applicant does not create a heightened risk. Therefore, none of the above disqualifying conditions apply to her.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and conclude the following three are potentially applicable:

- (a) the nature of the relationship with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization and interests of the U.S.;
- (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

¹⁷ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

¹⁸ ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

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 interests in favor of the U.S. interests; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant maintains a relationship with his mother, sister, and parents-in-law in Nigeria. He also maintains a relationship with his sister who lives in the United States. He sends his mother and parents-in-law a nominal amount of money on a regular basis. On one occasion he sent his sister in Nigeria money. He last visited his family in Nigeria in 2004. I find AG ¶ 8(c) does not apply because his familial relationships in Nigeria and with his sister in the United States are more than casual.

The United States maintains close relations with Nigeria. There are problems with threats in Nigeria and its human rights record is poor. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence operations against the U.S. Applicant was born in Nigeria, but chose the United States as his home country. His immediate family lives with him in the United States. Applicant, his wife, and two of their children have been citizens of the United States since 2007. His two youngest children were born in the United States. Applicant eagerly left Nigeria to build a better life for his family. He has found that opportunity and worked hard. He has no assets in Nigeria. None of his family members receive any pension or compensation from the Nigerian government nor do they have contact with the government. There is no indication that Applicant's relatives are in positions or involved in activities that would place Applicant in a position of having to choose between his family interests and those of the United States. There is no indication that Nigeria targets or exploits its own citizens to obtain intelligence. Based on Nigeria's relationship to the United States, it is unlikely that intelligence officials would attempt to pressure Applicant's relatives in Nigeria to gather valuable or classified information from the United States through Applicant. It is highly unlikely, considering Nigeria's relationship with the United States and Applicant's close ties to the United States that he would choose his family in Nigeria over his family and life in the United States. I find mitigating conditions AG ¶¶ 8 (a) and 8(b) apply.

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to

protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline describes disqualifying conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had two debts related to his foreclosed house. One debt is not being pursued and the other is being pursued by a collection company. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following five mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

Applicant unwittingly relied on the assertions of a real estate agent and loan officer and obtained mortgages that he subsequently could not pay. The house was foreclosed and sold at auction. The loan in SOR ¶ 2.a is not being pursued by the creditor. Applicant now understands that he was uninformed when he bought his house. He now understands the need for consulting professionals when executing complex

business transactions. He has hired a lawyer who is assisting him in resolving the remaining loan debt in SOR ¶ 2.b. Applicant has no other delinquent debts. He works two jobs. His wife is also working. I find that these debts occurred under circumstances that are unlikely to recur. I find they do not cast doubts on Applicant's reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies.

The collapse of the real estate market and the loss of income due to his wife's pregnancy were conditions beyond his control. Applicant attempted to pay his mortgage until it became obvious that he could not afford to do so. When the monthly payment escalated, he could no longer pay the mortgage. He was unable to refinance the loan because the property had depreciated. These were also conditions beyond his control. I find AG ¶ 20(b) partially applies. I believe Applicant was somewhat duped by an untrustworthy real estate agent and loan officer, however, he did not exercise due diligence in ensuring he understood the terms of the mortgage agreement before executing it. So he was equally responsible. When he eventually realized he could no longer handle resolving the debt by himself, he engaged an attorney who is negotiating a settlement on the debt in SOR ¶ 2.b. Applicant did not walk away from the debt, but is resolving it.

Applicant is taking significant steps to resolve his financial situation. I find there is a clear indication the problem is being resolved or his financial problems are under control. Therefore, I find AG ¶ 20(c) applies. I cannot find that Applicant's efforts constitute a good-faith effort to repay the creditors. Hence, I find ¶ 20(d) does not apply. There is no evidence to support the application of AG ¶ 20(e).

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 have incorporated my comments under Guidelines B and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under these guidelines, but some warrant additional comment.

Applicant and his family are firmly entrenched in the United States. He has been in this country since 2001 and has been a citizen since 2007. All of his assets are located in the United States. His wife and his family are citizens and residents of the United States. Although Applicant has some familial ties to Nigeria, I am convinced that he will resolve any issues in favor of the United States. Applicant experienced financial problems when he purchased a house and was unable to pay the mortgage payments when the rates changed, and his wife was not working. He acknowledges he made a bad financial decision because he did not understand the terms of the agreement, but also he was swayed by the information provided to him by the real estate agent and loan officer. Applicant, through his attorney, is negotiating the resolution of his only remaining debt. They are waiting for written confirmation that their settlement offer is accepted. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guidelines for Foreign Influence and Financial Considerations.

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.e:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a-2.b:	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 a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge