



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



In the matter of:)	
)	
)	ISCR Case No. 10-09258
)	
Applicant for Security Clearance)	

Appearances

For Government: Raashid Williams, Esq., Department Counsel
For Applicant: *Pro se*

December 5, 2011

Decision

LYNCH, Noreen A., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on June 28, 2010. On May 25, 2011, the Defense Office of Hearings and Appeals (DOHA) sent him a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guideline B. DOHA acted 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) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR, and requested a hearing before an administrative judge. The case was assigned to me on August 4, 2011. DOHA issued a notice of hearing on August 30, 2011, scheduling the hearing for October 20, 2011. Government

Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified, presented two witnesses, and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. DOHA received the transcript (Tr.) on October 27, 2011.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Nigeria. The request and supporting documents are attached to the record as HX. Applicant did not object to documents. (Tr. 9) I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations in the SOR under Guideline B (Foreign Influence) and offered explanations. He provided additional information to support his case. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a native of Nigeria. He received his undergraduate degree in Nigeria. He came to the United States from Canada in 1987, after obtaining his doctorate degree, to assume an academic position at a university. He received executive leadership training from an American university in 2007. His professional life in the United States has been in academia and medical research. He has been in his current position since June 2010. Applicant has not held a security clearance, but he has worked with sensitive information in his work for the Department of the Army. He became a naturalized U.S. citizen in May 2000. (GX 1) Applicant renounced his Nigerian citizenship. (AX A)

Applicant has been divorced since 2000. He has two children from the marriage.

Applicant's father is 95 years old. He is a citizen and resident of Nigeria. Applicant speaks to his father on the phone for birthday and Christmas. His father visited Applicant in 1997. Applicant visited him in Nigeria in 1994. Applicant occasionally sends his father money. (Tr. 50) His father does not know that Applicant is seeking a security clearance.

Applicant has two brothers. His older brother is a physician. Applicant has not seen him for almost ten years. His younger brother comes to the United States periodically for work. Applicant sees his younger brother when he visits the United States. Applicant believes his last visit was in 2008. His brothers do not know the nature of Applicant's current work. (Tr. 58)

Applicant explained at the hearing that he came to the United States to establish a career in academia. His professional career includes serving as Dean of the College of Science and Technology for an American university. He has written many publications, serves on various boards, and does consulting work for the Army Medical Research and Materiel Command. He has roots in the United States both professionally and personally. Applicant has worked his entire adult life in the United States and has deep and long-term relationships. He has not held a clearance, but has been involved with sensitive information, providing service to the U.S. Government through his work with medical research. Applicant was credible when he explained that if in the unlikely situation that there would be pressure on him or his family, he would immediately contact his facility security officer. He would respond to questions concerning his current work as a transition from academia to a high-tech company consistent with his life-long research. (Tr. 58)

Applicant expressed his love for the United States. He contributes to the community in various ways. He volunteers to teach science in elementary schools in the inner city. He lectures and involves students in science demonstrations. He has a strong commitment to public service. He wants to assume responsibility to help society in the United States since he lives a comfortable life. He swears to protect the United States with honor and distinction. He realizes that he cannot “divorce” his relatives, but during his years in the United States, he has not contacted any friends or contacts in Nigeria. He is a law-abiding citizen.

Applicant’s friend, a retired U.S. military commander, recommends him for a security clearance. He has known Applicant for more than ten years. The commander, who held a security clearance while in the military, is also a naturalized U.S. citizen, who was born in Nigeria. (Tr. 20)

An academic colleague of Applicant testified that he has known Applicant for 25 years. He is currently in an SES position in the U.S. Navy, and has held a security clearance for 15 years. (Tr. 28) He is familiar with the position that Applicant holds due to prior experience in that division. The witness testified that, in his opinion, Applicant is proud to be an American citizen. He is passionate about doing well in the United States. His character is beyond reproach, and there is no reason to question his ability to protect classified information. (Tr. 36)

Applicant submitted a letter of recommendation from the acting Director, Army Research Development and Engineering Command. (AE C) Applicant’s potential to transform the productivity of the Army Lab and significantly contribute to the Army’s readiness in the medical and human signatures area was praised. Applicant is a man of high integrity with research and leadership skills that could serve the Army and the nation with distinction. He has worked in two programs that are the Army’s top priority and challenge. (Ax C) The acting Director recommends Applicant for a security clearance without hesitation.

I take administrative notice of the following facts. Nigeria is a federal republic 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 11percent 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 counterterrorism 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.

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

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The

President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The SOR alleges Applicant's father and two brothers are citizens and residents of Nigeria. (¶ 1.a)

The security concern under this guideline 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.

Three disqualifying conditions under this guideline are relevant to this case. First, a disqualifying condition may be raised by "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." AG ¶ 7(a). Second, a disqualifying condition may be raised by "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." AG ¶ 7(b). Third, a security concern may be raised if an applicant is "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(d).

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

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." ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, 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, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Applicant has lived and worked in the United States since 1987. He is a naturalized U.S. citizen. Applicant's children are U.S. citizens.

Applicant's father and two brothers live in Nigeria. He speaks to his father on the phone several times a year. He sees his brother when he comes to the United States for work. He speaks to his other brother on occasion. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002). Applicant has not rebutted this presumption.

After considering the totality of Applicant's family ties to Nigeria as well as each individual tie, I conclude that Applicant's family ties are sufficient to raise an issue of a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant speaks to his brother once or twice a year on the phone. He saw his brother in 2008. Based on all these circumstances, I conclude that AG ¶¶ 7(a), (b), and (d) are raised.

Security concerns under this guideline can be mitigated by showing that "the nature of the relationships 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, or government and the interests of the U.S." AG ¶ 8(a).

Security concerns under this guideline can be mitigated by showing "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." AG ¶ 8(b).

Applicant maintains a relationship with his father and two brothers who live in Nigeria. He occasionally sends his father money. He has not seen his one brother for almost ten years. He sees his younger brother when he visits the United States. I find AG 8(c) does not apply because his familial relationships in Nigeria 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 United States. Applicant was born in Nigeria but chose the United States as his home country. His children are in the United States. He has been a citizen of the United States since 2000. He has built a stellar academic career in the United States. He contributes to the local community by teaching in local schools. He has no assets in Nigeria. There is no indication that Applicant's relatives are in positions or are involved in activities that would place Applicant in a position of having to choose between his family 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 chose his family in Nigeria over his life and children in the United States. I find mitigating AG 8(a) and 8(b) apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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 have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a naturalized U.S. citizen who has lived in the United States since 1987. He and his children reside in the United States, and are both naturalized U.S. citizens. He was articulate, candid, sincere, and credible at the hearing. Applicant's home is in the United States. Applicant has been successful in academia and research. His current employer recommends him for his professionalism and integrity.

Applicant chose to leave his home and pursue his academic career in the United States. He is firmly entrenched in the United States. All of his assets are located in 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.

There is no evidence any of the individuals at issue are involved with, or under scrutiny, by interests antithetical to the United States. His family members in Nigeria do not know the specifics of his work.

Regarding Applicant's life in the United States, he is an American citizen, with a stable family, social, and professional life. His life is focused here. He is admired by his peers. His academic career has blossomed in the United States. He is active in his community. There is no evidence indicating that he may be manipulated or induced to help a foreign power or interest. He credibly stated he would report any attempts to influence him to security. In light of these facts and the country at issue, I find that Applicant successfully mitigated foreign influence concerns.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegation in the SOR:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Noreen A. Lynch
Administrative Judge