



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



In the matter of:)
)
) ISCR Case No. 11-08270
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

11/26/2012

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is a naturalized U.S. citizen, whose brother, three sisters, and other family members are resident citizens of his native Nigeria. He owns his previous residence in Nigeria, although he signed over control and use of this home to a pastor in Nigeria. Foreign influence concerns raised by these foreign relationships and assets are overcome by his ties to the United States developed since he immigrated with his immediate family in April 2004. Clearance granted.

Statement of the Case

On July 3, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline B, Foreign Influence, and explaining why it could not find it clearly consistent with the national interest to grant him a security clearance. DOHA took the action 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 responded to the SOR on July 17, 2012, and he requested a hearing. On September 7, 2012, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant him a security clearance. On September 12, 2012, Applicant waived his right under the Directive to 15 days advance notice of the hearing. I scheduled a hearing for September 26, 2012.

I convened the hearing as scheduled. Two Government exhibits (GE 1-2) and one Applicant exhibit (AE A) were offered and admitted without objection. Applicant and two of his friends testified, as reflected in a transcript (Tr.) received on October 3, 2012. Also, I agreed to take administrative notice of facts pertinent to the Federal Republic of Nigeria, as set forth in the Government's Administrative Notice request dated September 24, 2012, subject to any objections and proposed facts for notice submitted by Applicant on or before October 10, 2012. The deadline was extended twice for good cause shown by Applicant, with the final deadline November 5, 2012.

On November 6, 2012, Applicant responded to DOHA's Administrative Notice request, and he submitted several photographs. Deadline for comment and objection to the admission of Applicant's email correspondence dated September 30, 2012 (AE B), October 1, 2012 (AE C), October 18, 2012 (AE D), and November 6, 2012 (AE E), and of the photo images (AE F) was November 13, 2012. Department Counsel filed no objections to the admission of AEs B-F, so the documents were admitted into the record. Department Counsel stipulated to the fact that Applicant's mother died on September 30, 2012.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel requested administrative notice be taken of certain facts relating to the Federal Republic of Nigeria (Nigeria) and its foreign relations, including with the United States, as set forth in a request dated September 24, 2012. The request was included in the record, although not marked formally as an exhibit. It was based on publications from the Department of State¹ and the Congressional Research Service,² and also on a statement for the record by the Director of National Intelligence.³ I was

¹ See the U.S. Department of State's *Country Reports on Human Rights Practices for 2011, Nigeria*, dated May 24, 2012; *Country Specific Information, Nigeria*, dated July 16, 2012; *Background Note: Nigeria*, dated April 19, 2012; *Travel Warning: Nigeria*, dated June 21, 2012; and *Country Reports on Terrorism 2010, Chapter 2-Country Reports: Africa Overview*, dated August 18, 2011.

² See the Congressional Research Service's *CRS Report for Congress, Nigeria*, dated February 12, 2010.

³ See the Director of National Intelligence's *Unclassified Statement for the Record on the Worldwide Threat Assessment of the US Intelligence Community for the Senate Select Committee on Intelligence*, dated January 31, 2012.

not provided with a copy of the source documents, but they were available on the Internet. Department Counsel sent Applicant a copy of its Administrative Notice request and source documents, which he did not receive by the hearing. I agreed to take administrative notice subject to any objections and any facts proposed by Applicant for administrative notice by October 10, 2012.

On September 30, 2012, Applicant notified Department Counsel that he had received his copy of the Administrative Notice documents and that his mother had died earlier that day. At Applicant's request, he was granted several extensions of time to review the source documents and comment on the Government's request. On November 6, 2012, he proposed some facts appropriate for administrative notice, primarily but not exclusively about Boko Haram, as well as information about his personal situation evidentiary in nature (AE E). The Government filed no objections by the November 13, 2012, due date. After reviewing the source documents and considering the facts proposed for administrative notice by both parties, I accepted several facts for administrative notice, as set forth below.

Findings of Fact

The SOR alleged under Guideline B, Foreign Influence, that Applicant's mother (SOR 1.a), two brothers and three sisters (SOR 1.b), mother-in-law (SOR 1.c), and other family members and friends (SOR 1.d) are resident citizens of Nigeria. Under Guideline B, Applicant allegedly owned a house in Nigeria valued around \$50,000 (SOR 1.e). In a detailed response, Applicant admitted that as of July 17, 2012, his mother and siblings were resident citizens of Nigeria. However, his mother-in-law was a U.S. permanent resident living with him and his spouse in the United States. He denied that he had other friends and family in Nigeria to whom he was bound by affection or obligation. Applicant admitted that he still owned his previous residence in Nigeria, although the property was being maintained by someone in Nigeria to whom he had handed over all the paperwork about the property. After considering the pleadings, exhibits, transcript, and the facts pertaining to Nigeria for administrative notice, I make the following findings of fact.

Applicant's Personal Background

Applicant is a 52-year-old electrician employed by a U.S. defense contractor since late February 2011. (Tr. 48, 51.) He seeks his first U.S. security clearance. (GE 1.)

Applicant is the fifth of six children born to a well-respected family within their ethnic community in southwestern Nigeria. (Tr. 45, 48, 74.) Applicant's father held a very prominent position in their region before the country gained its independence in 1960 and became a republic in 1963. (GE 1; Tr. 45, 52, 74.) Applicant's father died in 1973. (GE 2; Tr. 52.)

Applicant was educated in Nigeria. He completed his college studies at a public polytechnic university in June 1994 and was awarded his degree in January 1995. (GEs 1, 2; Tr. 50.) He worked as a telecommunications engineer in Nigeria. (Tr. 49.) In January 1994, he and his spouse married. They have three children, who are now ages 11, 15, and 17. (Tr. 25-26.) Around 1998, Applicant and his spouse bought land in Nigeria on which they built their home.⁴ He estimated the value of the home to be around \$50,000 USD.⁵

Around 2000, Applicant began working for a U.S.-Nigerian joint venture company. (Tr. 50.) He appreciated that work was performed according to established procedures without outside influence. (Tr. 70.) He eventually decided to immigrate to the United States for his children's future. (Tr. 60.) In 2003, he won the U.S. visa lottery. (Tr. 46, 49.) In October 2003, Applicant and his immediate family members (spouse and three children) were issued Nigerian passports valid until October 2008. (Tr. 26-27.) In April 2004, they used their Nigerian passports to immigrate to the United States. Applicant did not use his Nigerian passport thereafter, and he took no steps to renew his foreign passport once it expired. (GEs 1, 2.)

Applicant and his family stayed with a recent immigrant from Nigeria for about a month until they found an apartment of their own. (GE 1; Tr. 72.) Applicant supported his family in the United States, initially through temporary agency work at a warehouse from June 2004 to December 2004. He resigned in lieu of being terminated when a packaged product he had handled went missing. Applicant indicates that the product failed to scan properly, so he left it for his supervisor to handle. (GE 2.)

From January 2005 to April 2005, Applicant worked at a pharmacy's distribution center while training to become a certified nurse assistant. He did not enter the healthcare industry, but worked instead as a full-time youth counselor. (GE 1.) In the fall of 2005, he enrolled in an electrical technology program, which he successfully completed in June 2007 with a 2.92 GPA. (AE A.) In November 2006, he and his spouse bought their home in the United States for \$233,000. (GEs 1, 2; Tr. 66.)

In mid-June 2008, Applicant began his career in the electrical industry, as an apprentice electrician, while continuing to work as a youth counselor. (GE 1; AE A.) In September 2008, he began apprentice electrician training toward his professional

⁴Applicant told an investigator for the Office of Personnel Management (OPM) in January 2011 that he owned a home in Nigeria from 1998 to present. (GE 2.) At his hearing, he testified discrepantly that he bought the land and built two single-family homes. On immigrating to the United States, "every property that we have, we gave them out because we knew we are not going there again. But for the house, since we know that there are so many people that might be in need, the family friend, I said he can utilize that opportunity to help those who are in need." (Tr. 63.) It is unclear whether \$50,000 is the value of one or both houses.

⁵The value of the asset held by Applicant was established solely through his testimony. No corroboration of the value of his and his spouse's U.S. assets, or the property in Nigeria, was presented by way of tax assessments, independent appraisals, contracts of sale, or similar documents. Since Department Counsel did not contest the evidence regarding the value, I accepted Applicant's testimony as true and accurate.

license. (Tr. 50.) He had to leave his job as a youth counselor early to get to his other job on time. In February 2009, he resigned from his job with the youth when his new supervisor would not accommodate his work schedule. (GE 1.)

In early August 2009, Applicant and his spouse became naturalized U.S. citizens and renounced their Nigerian citizenship. (GEs 1, 2; Tr. 49, 61.) Applicant's children became U.S. citizens as well. (Tr. 59.) In October 2009, Applicant was issued his U.S. passport. (GE 1.)

In March 2010, Applicant earned his diploma as an apprentice electrician. In April 2010, Applicant was laid off from his job with the electrical company because of lack of work. (GE 1; AE A.) Applicant had been a dedicated worker for the company. (AE A.) He collected unemployment compensation for the next six months. (GE 1.)

On December 14, 2010, Applicant completed and certified an Electronic Questionnaire (e-QIP) for his current employer. He disclosed the Nigerian residency and citizenship of his then 97-year-old mother, his two brothers, his three sisters, and his mother-in-law. Applicant indicated he had no contact with his younger brother and the eldest of his three sisters. Applicant answered "Yes" to whether he had close or continuing contact with other foreign nationals within the last seven years. He listed five Nigerian resident citizens, including a "niece" and two friends (a teacher and a reverend), with whom he had contact over 15 times a year. Applicant answered "No" to whether he had or has had in the last seven years any foreign financial interests that someone controls on his behalf. He disclosed that he owned real estate in Nigeria since December 2000, consisting of a single-family home valued around \$50,000 USD. (GE 1.)

On January 10, 2011, Applicant was interviewed by an OPM investigator about his foreign ties. While he and his spouse had renounced Nigerian citizenship when they became U.S. citizens, he admitted that he had several family members, including his mother, who were resident citizens of Nigeria. Concerning their occupational endeavors, Applicant indicated that his older brother worked as a pastor, while his younger brother was a printer. As for his three sisters, the eldest is a widow, and the middle worked as a school teacher. Applicant provided no occupation for the youngest of his sisters. Applicant indicated that he had telephone contact with his mother and middle sister once every two weeks and with his younger brother once every three weeks. His mother-in-law was a pastor. His father-in-law died in 1993. As for the other foreign personal contacts listed on his e-QIP, Applicant indicated that he had once weekly contact with a 34-year-old "niece," who worked as an accountant in Nigeria. He had four friends in Nigeria with whom he had ongoing relations: an accountant/pastor contacted once every two months;⁶ a fish breeder contacted once every three years; a pastor/teacher (who handles his property in Nigeria); and a teacher. Applicant denied he was vulnerable to foreign influence because of these foreign relationships. As for his

⁶When asked at his hearing about the extent of his contacts with this pastor in Nigeria, Applicant responded that the pastor came to the United States for a religious conference two years ago. This pastor called him when he arrived and just before he returned to Nigeria. (Tr. 66.)

house in Nigeria, Applicant indicated that a friend was overseeing the property. The rental income from the property was retained by his friend to maintain the property. Applicant denied that he could be pressured because of this property, which he would sell if required. (GE 2.)

Applicant started working for his defense contractor employer on February 28, 2011. (Tr. 51.) His supervisor has had no issues with his work performance. Applicant has reported to work on time, taken pride in his work, and demonstrated a willingness to take on and learn new tasks. (AE A.)

As of late September 2012, none of Applicant's family members in Nigeria was involved with the Nigerian government. (Tr. 52.) Applicant's family members have not been mistreated. (Tr. 53.) Applicant's mother lived with Applicant's eldest sister (Tr. 53.) before her recent death at age 99 on September 30, 2012. (GE 1; AE B.) Applicant sent his mother \$100 in August 2012 to help cover the cost of her prescription medications. (Tr. 62.) Applicant had telephone contact with his mother in May 2012 and with his sister in July 2012.⁷ (Tr. 56.) Applicant's middle sister is married to a farmer. She teaches in a public school. Applicant last spoke to this sister around March 2012. (Tr. 62.) Applicant's youngest sister is a homemaker married to a teacher. (Tr. 57-58.) As of late September 2012, Applicant had not spoken to this sister since 2008. (Tr. 62.) Applicant's most recent contact with his older brother occurred about two years ago. (Tr. 55.) Applicant's younger brother is now also a pastor as well as youth minister in Nigeria. (Tr. 56.) Applicant primarily called his brother to ask about their mother. (Tr. 72.) Applicant had recent telephone contact with him in August 2012, when he asked his brother to help send money to their mother for her medication (Tr. 61), and then again on September 30, 2012, when his brother called him about their mother's death. (AE C.) Applicant does not believe that he stands to inherit any financial asset in Nigeria from his mother or any other relative. (AE C; Tr. 69.)

Applicant's father-in-law worked in a textile factory in Nigeria before his death. (Tr. 58.) Applicant's mother-in-law is still a pastor. She has lived with Applicant and her daughter in the United States since early 2011 (Tr. 59.) and has U.S. permanent residency. Applicant's wife has two brothers and two sisters, who are Nigerian resident citizens. To Applicant's knowledge, his spouse's siblings do not work for the Nigerian government. (Tr. 59.) One brother and one sister are clerks.⁸ Her other brother is in the seminary. It is unclear if the other sister is employed outside the home. (Tr. 59-60.)

⁷Applicant testified that he reached his mother either through his oldest sister or through his younger brother, on the order of once every two months as of late September 2012. (Tr. 71-72.) Applicant provided no address information for either this sister or this brother on his December 2010 e-QIP. (GE 1.) Applicant indicated inexplicably on his e-QIP that he had no contact with this brother. As of January 2011, he reported contact once every two weeks with this sister and once every three weeks with this brother. (GE 2.)

⁸Applicant testified that the relative he identified as his niece during his interview with the OPM investigator was in fact his spouse's younger sister. He testified discrepantly about the extent of his contacts with her, indicating that he hasn't talked to her, but that his spouse speaks to her once every two weeks. (Tr. 64-65.)

Applicant has not traveled to Nigeria since immigrating to the United States in 2004, and his family members had not visited him in the United States. (Tr. 61-62.) He did not travel to Nigeria for his mother's funeral held in early October 2012. (AEs C-F.) He does not intend to return to Nigeria to live. (Tr. 61.) His only retirement assets are 401(k) savings in the United States from his electrician apprentice work for an electric contractor. (Tr. 67.) He worked there less than two years when he was laid off because of a lack of work. (GE 1.) The elder of Applicant's two sons plays soccer for his high school. His daughter, who is 17, is a youth forum leader, who plans to stay in the United States for college. (Tr. 69.)

Applicant has been attending his present church in the United States for two years now. He is superintendent of the children's religious education program. (Tr. 68.) A fellow church member, who is an associate dean at a private university, has observed Applicant to be hardworking, effective in his communications, diligent in fulfilling his duties, and a responsible and loving father and husband. (AE A.)

Applicant has had close relationships with two immigrants from Nigeria, who are now U.S. citizens. Applicant has not discussed the nature of his work with the defense contractor with them, and both men consider Applicant to be trustworthy. One friend, who has known Applicant for the past eight years, is employed as a certified nurse assistant. He attends the same church as Applicant and holds the position of youth minister. (Tr. 31-34.) The other friend is a housing inspector, who served in the U.S. military until 2011. He owns the home in which Applicant and his family resided temporarily on their arrival in the United States. He became acquainted with Applicant at that time. He continues to see Applicant once or twice a week. Their families are friendly and socialize frequently. Applicant sent some "goodies" for his brother through this friend, who traveled to Nigeria in 2009. While this friend did not know Applicant or his family personally before they immigrated, he is aware that Applicant comes from a family for which there is a high level of respect in Nigerian society. (Tr. 38-45.) He has "extreme confidence" in Applicant based on their interactions. (Tr. 42.)

Administrative Notice

Nigeria is the most populous nation in Africa. Despite its oil wealth, the country is highly underdeveloped and is mired in poverty. Among Nigeria's 250 ethnic groups, the mostly Muslim Hausa-Fulani are dominant in the northern two-thirds of the country. The Yoruba people, about half of whom are Christian, predominate in the southwest. The Catholic Igbo are the largest ethnic group in the south.

Nigeria has experienced periods of political instability, with conflict along ethnic and geographic lines and dominated by military coups, since gaining its independence from Britain in October 1960. After 16 years of consecutive military rule, Nigeria transitioned in May 1999 to a civilian, democratic form of government, led by President Olusegun Obasanjo, who oversaw a marked improvement in human rights and democratic practices. In October 2001, then President Obasanjo formed a National

Security Commission to address the issue of communal violence. In May 2006, an attempt to amend the Constitution to allow a third presidential term for Obasanjo was soundly defeated in a democratic and relatively peaceful process. Subsequent national and state elections in 2007 were seriously flawed with credible reports of malfeasance and vote rigging, and were marked by violence. In May 2007, a moderate respected state governor, Umaru Yar'Adua, assumed the presidency of Nigeria, vowing peace and security in the Niger Delta and reform of the oil and gas industry as among his top priorities. Many of the promised reforms remained unimplemented, although Yar'Adua allowed the legislative and judicial branches to operate freely.

Through parliamentary resolution, then Vice President Goodluck Jonathan assumed presidential power due to the illness of Yar'Adua in February 2010. On Yar'Adua's death, Goodluck Jonathan assumed the Presidency in May 2010. On April 16, 2011, President Jonathan, a Southern Christian, was elected to a four-year term in an election generally considered to be credible and orderly by international observers. The opposition candidate, a northern Muslim, challenged the election. Violence erupted in the north and middle-belt states, which led to loss of lives, property damage, and restriction on movement. Elements of the security forces periodically acted independent of civilian control. Serious human rights problems persisted in Nigeria in 2011, which included sporadic abridgment of citizens' right to change their government; politically motivated and extrajudicial killings by security forces; summary execution, torture, rape, and other inhuman treatment of prisoners and detainees; denial of fair public trial; harsh and life threatening prison conditions; executive influence on the judiciary and judicial corruption; arbitrary interference with privacy; and restrictions on some civil liberties. Impunity was widespread in all levels of government. Laws prohibiting discrimination, societal abuses, and trafficking in persons, were not effectively enforced.

In the oil-producing region of the Niger River Delta, resident U.S. citizens and other foreigners have frequently been threatened and held hostage during labor disputes. Since January 2009, criminals have abducted over 145 foreign nationals in Nigeria, including seven U.S. citizens since November 2010. Most militant groups accepted an offer of amnesty from then President Yar'Adua in October 2009, which lowered but did not eliminate the violence in the region. A state of emergency declared by the Nigerian president on December 31, 2011, in the states of Borno, Niger, Plateau, and Yobe, is still in effect. A militant sect, Boko Haram, perpetrated killings and bomb attacks throughout the country, on a regular basis in the states of Borno and Bauchi. The sect claimed responsibility for three bombings in the capital Abuja in 2011, including of the United Nations headquarters on August 26, 2011, and for multiple attacks in 2012 against government, military, and civilian targets (i.e., a newspaper and a church) in the northern states in which thousands died or were injured. Elements of Boko Haram have engaged with al-Qa'ida in the Islamic Maghreb.

In April 2012, a U.S. citizen was kidnapped in the state of Imo. In May 2012, a German citizen held since January 2012 was killed by his captors during a military-led raid to free him. British and Italian nationals were held captive for ten months by Boko Haram militants before being killed by their captors in March 2012 during a rescue

attempt by British security forces. Due to the high risk of continued attacks against Western targets, the U.S. State Department in June 2012 continued to warn U.S. citizens of the risks of travel to and within Nigeria, and recommended avoiding all but essential travel to nine states in the Delta region. The U.S. mission requires U.S. advance permission for U.S. government travel to several states in Nigeria, and as of June 2012, it had temporarily restricted all but the most essential travel to northern Nigeria. Many foreign oil companies implemented “essential travel only” policies in the Niger Delta states. Travel by foreigners to areas considered by the Nigerian government as conflict areas without prior consultation with local security authorities may be viewed as inappropriate and potentially illegal. In 2008, Nigerian authorities detained and interrogated American citizens, including journalists, on six occasions before deporting them.

U.S. citizen visitors and residents have been victimized by violent crimes (mugging, assault, armed robbery, burglary, carjacking, and rape) in Nigeria, including in Lagos. Extortion and home invasion remain a serious threat in Nigeria. Commercial scams that may involve foreigners in illegal activity remain common, and the ability of U.S. consular officials to extricate U.S. citizens from illegal activity or scams is extremely limited. Nigeria requires foreign visitors, including from the United States, to obtain a visa to enter the country.

Nigeria is a member of several international organizations, including the United Nations and the Organization of the Petroleum Exporting Countries (OPEC). Since independence, Nigerian foreign policy has been focused on Africa and the goals of African unity and independence, peaceful settlement of disputes, nonalignment, on no interference in the internal affairs of other nations, and regional economic cooperation and development. Over the past decade, Nigeria has played a pivotal role in support of peace in Africa, providing the bulk of the troops for United Nations peacekeeping efforts in the region. Nigeria has also been a leader in forging an antiterrorism consensus among states in Sub-Saharan Africa.

The U.S.-Nigerian bilateral relationship has continued to improve since the restoration of basic democracy in 1999. Nigeria is the United States largest trading partner in sub-Saharan Africa, due to the high level of petroleum imports from Nigeria. Oil and gas exports account for more than 95% of Nigeria’s export earnings and over 80% of federal government revenue. The United States considers Nigeria critical to U.S. interests. In April 2010, the United States and Nigeria formalized their commitment to bilateral talks on four key areas: good governance, transparency, and integrity; energy and investment; Niger Delta and regional security; and agriculture and food security. The United States provides assistance to help Nigeria foster transparent and accountable governance, engage civil society and government partners to battle corruption, increase professionalism of its military and law enforcement agencies, strengthen health and education systems to deliver quality services, grow a non-oil economy, and improve the environment for regional and international trade.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to 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 overall 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 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 that 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. 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B—Foreign Influence

The security concerns about foreign influence are 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.

Despite the death of Applicant's mother in late September 2012 and the U.S. permanent residency of Applicant's mother-in-law since early 2011, Applicant retains foreign ties to his native Nigeria in that his siblings and his spouse's siblings are resident citizens of Nigeria. Furthermore, he still owns his previous residence in Nigeria, which he values around \$50,000 USD. Four disqualifying conditions under AG ¶ 7 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;
- (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; and
- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

As U.S. immigrants, Applicant and his spouse may reasonably be expected to have some contact with, and feelings of affection or obligation for, the family members that they left behind. The salient issue under AG ¶¶ 7(a), 7(b), 7(d), and 7(e) is whether

there is substantial evidence of a “heightened risk” of foreign influence or exploitation because of the respective foreign tie, contact, or interest. The “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, but it is nonetheless a relatively low standard. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to coercion. Even friendly nations may have interests that are not completely aligned with the United States. As noted by the DOHA Appeal Board, “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). 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 on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Applicant denies any close feelings of affection or obligation to family members in Nigeria other than to his mother, who died days after his hearing. (“The only link that I have with Nigeria as close tie has died.”). Applicant does not appear to have particularly close relations with the youngest of his three sisters, whom he last contacted in 2008, or with his older brother, to whom he last spoke around two years ago. He had not spoken to his middle sister since March 2012, although as of November 2010, they were in contact once every two weeks. Of late, Applicant contacted his older sister about their mother once every two months. Applicant’s most frequent and recent contact has been with his younger brother. Applicant inextricably indicated on his December 2010 e-QIP that he had no contact with this brother. A month later, he described their contact as being once every three weeks. While his concern for his mother was the primary motivation for him contacting family members in Nigeria, as to his younger brother and the eldest and middle sisters, it may fairly be inferred from the frequency of their contacts that he had feelings of obligation, if not also affection for them as well. The death of his mother may result in less contact, but that remains to be seen.

Moreover, the DOHA Appeal Board has repeatedly held that in-laws represent a class of persons contemplated by the Directive as presenting a potential foreign influence risk. As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse. See, *e.g.*, ISCR Case No. 08-10099 (App. Bd. Jan. 28, 2011); ISCR Case No. 03-26176 at 5 (App. Bd. Oct. 14, 2005). Applicant indicated on his e-QIP that he had contact more than 15 times a year with a Nigerian initially claimed to be his niece but who is in fact his spouse’s younger sister. He now asserts he has no contact with her, although his spouse speaks with her sister once every two weeks. The record is largely silent as to the extent of Applicant’s or his

spouse's contacts with her other siblings in Nigeria. Even so, Applicant's mother-in-law lives with Applicant and his spouse. Applicant's mother-in-law is presumed to have close bonds with her children and their families absent proof to the contrary. In addition, Applicant has significant ties to some friends in Nigeria, including the pastor who manages his property.

Concerning the nature of the Nigerian government, there is no evidence that intelligence operatives from Nigeria seek classified or economic information from U.S. businesses. Yet, with its negative human rights record and high levels of crime, it is conceivable that anyone living in Nigeria might be targeted by governmental or non-governmental criminal elements in an attempt to gather information from the United States. While none of Applicant's family members in Nigeria was shown to currently work for the Nigerian government, the family's past prominence within their region makes it difficult to dismiss the risk of them being targeted. Nigeria is not known to sponsor terrorism, but terrorist elements in Nigeria, such as Boko Haram, have injured or killed thousands of Nigerians through multiple attacks against government, military, and civilian targets, including a church, since 2011. Most of these attacks have occurred in the oil-rich Niger Delta region and other northern states rather than in southwest Nigeria. Nonetheless, Department Counsel produced substantial evidence of Applicant's personal contacts and relationships with Nigerian resident citizens, including through his spouse, to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(d) apply. Furthermore, Applicant's ownership of real estate in Nigeria valued around \$50,000 USD establishes AG ¶ 7(e). Although the property represents only about a quarter of his and his spouse's real estate assets, it is a substantial property interest in a foreign country that could present a heightened risk of foreign influence. Further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8(a), "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.," is difficult to satisfy. Although there is no evidence that the region in southwestern Nigeria where his relatives and friends reside has been targeted or victimized, there is ongoing terrorist activity by extremist elements in Nigeria, and the country has a poor human rights record, which includes serious abuses committed by security forces.

Applicant has infrequent contact with his older brother and youngest sister, as well as with a couple of friends. He has telephone contact with a friend who works as a fish breeder once or twice a year or even less, depending on whether his e-QIP (once or twice a year) or interview (once every three years) is more accurate. 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 in part. However, AG ¶ 8(c) is not satisfied as to other relatives and friends. He reported on his e-QIP that he had more than 15 contacts per year with the pastor who manages his home in Nigeria, with a teacher, and with his spouse's younger sister.

The heightened risk that exists because of his foreign connections to these friends, three of his siblings, and his spouse's sister, if not also her other siblings, may be mitigated under AG ¶ 8(b), "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest." By immigrating to the United States in 2004, making no attempt to renew his Nigerian passport on its expiration in 2008, and acquiring his U.S. citizenship, Applicant has shown he has little loyalty to the government or country of Nigeria. He renounced his citizenship to Nigeria by becoming a U.S. citizen, and he does not intend to return to Nigeria to live. However, while the risk of foreign influence has diminished with the death of his mother, his loyalty or obligation to some of his siblings and friends in Nigeria cannot reasonably be characterized as minimal.

Key to the AG ¶ 8(b) analysis is whether Applicant has established "deep and longstanding relationships and loyalties in the U.S." Applicant has lived in the United States permanently only since April 2004, while he spent 43 years in his native Nigeria. It would be premature to characterize his ties to the United States as "longstanding" under AG ¶ 8(b). Nonetheless, given the efforts he has made in the past eight years to establish a life for himself and his family in the United States, I am persuaded that he can be counted on to act in U.S. interests. He applied to immigrate to the United States, knowing that if he won, he would be leaving behind his mother and siblings. He entered the U.S. legally on an immigrant visa and his Nigerian passport. He did not otherwise use his foreign passport, and he allowed it to expire without taking any steps to renew it. He has not traveled to Nigeria, even for his mother's recent funeral, and his relatives have not come to the United States to visit him since he immigrated. He and his spouse apparently applied for U.S. citizenship as soon as they were eligible, given they became naturalized U.S. citizens 5.5 years after they entered the U.S. His spouse's mother moved in with them in early 2011, and she has U.S. permanent residency status. There is no evidence that his mother-in-law has relatives in the United States apart from Applicant and his spouse, who could have sponsored her lawful immigration.

On the career front, Applicant, who had been working as an engineer before coming to the United States, initially completed certified nurse assistant training before pursuing training and then professional licensure as an apprentice electrician in the United States. He held two jobs between June 2008 and February 2009, continuing his work as a youth counselor while gaining experience in the electrical industry. In the past 20 months that he has been with his defense contractor employer, Applicant has demonstrated his pride in his work and a willingness to volunteer for additional tasks. Applicant and his spouse bought their home in the United States around November 2006, and Applicant has been active in his church. His family's socialization with other Nigerian expatriates is understandable and does not undermine the efforts he has made to establish roots in the United States. Applicant's children are involved in activities with

their school peers. His ties to the United States appear to be permanent. AG ¶ 8(b) applies in that his loyalties are to the United States.

While Applicant still owns his previous home in Nigeria, he does not intend to return there. The foreign property represents about one quarter of his real estate holdings, but it is his only foreign financial asset. He turned over all the documentation and management of the property to a pastor friend for the benefit of others who might be in need, and he receives no rental income from the property. Applicant has no emotional tie to the property, and it is not one that his family members in Nigeria or the United States rely on for their livelihood. AG ¶ 8(f), “the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual,” applies because the nature of the interest is routine.

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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).⁹

Applicant has earned the favorable recommendation of his supervisor for his dedication and pride in his work. He has chosen to focus his energies on making a life for himself and his immediate family in the United States, and there is nothing untoward about his contacts with his siblings and other friends in Nigeria. These foreign resident citizens work in education or in religious ministry and have no role in the Nigerian government, notwithstanding the prominent role Applicant’s ancestors may have had in Nigerian society or governance in the past. While the risk of undue foreign influence cannot be completely ruled out, Applicant has persuaded me that he is not likely to be influenced or pressured because of his foreign ties, particularly so now that his mother is deceased. For the reasons stated above, I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

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:

⁹ The factors under AG ¶ 2(a) are as follows:

- (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.

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

Elizabeth M. Matchinski
Administrative Judge