



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 12-09246
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

07/29/2016

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant did not mitigate security concerns raised by his adverse financial history. Over the past 11 years, he has twice discharged his delinquent debts through Chapter 7 bankruptcy. His most recent Chapter 7 bankruptcy discharge occurred in February 2015. It is too soon to safely conclude that his financial situation is under control and financial issues will not recur. He did mitigate security concerns raised by his familial connections to the Philippines, but not the concerns raised by his close familial connections and contacts in Nigeria. Clearance is denied.

**History of the Case**

On June 12, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his circumstances raised security concerns under the financial considerations and foreign influence guidelines.<sup>1</sup> On June 29, 2015, Applicant answered the SOR and

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<sup>1</sup> This action was taken under Executive Order (E.O.) 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.

requested a hearing to establish his eligibility for access to classified information (Answer).

On September 15, 2015, Department Counsel indicated the Government was ready to proceed. On January 11, 2016, I was assigned the case. The hearing was initially scheduled for February 9, 2016, but due to inclement weather was rescheduled for March 10, 2016.<sup>2</sup> The hearing was convened on the later date.

At hearing, Government exhibits (Gx.) 1 – 8 were admitted without objection. Applicant testified and Applicant's exhibits (Ax.) 1 – 6 and Ax. A – L were admitted, without objection, in evidence.<sup>3</sup> At Applicant's request, I kept the record open to March 31, 2016, to provide him the opportunity to supplement the record.<sup>4</sup> He did not submit any additional evidence. The hearing transcript (Tr.) was received on March 21, 2016.

### **Federal Republic of Nigeria (Nigeria)**

Administrative notice may be taken of uncontroverted, easily verifiable facts regarding a foreign country set forth in reliable and relevant U.S. Government reports. Additionally, the official position of relevant federal agencies or the pertinent statements of key U.S. Government officials may be appropriate for administrative notice. Generally, the party requesting administrative notice of a particular matter must provide the source document, either the full document or the relevant portion of the source document, to allow an administrative judge to assess the reliability, accuracy, and relevancy of any matter requested for administrative notice.<sup>5</sup>

Department Counsel requested that I take administrative notice of certain matters regarding Nigeria. In advance of the hearing, Department Counsel forwarded to Applicant the Government's request for administrative notice and the relevant portions of the source documents cited in the notice. (Gx. 8) Applicant confirmed that he received the notice and the relevant documents, and had an opportunity to review a full copy of the source documents. He did not object to the matters requested for administrative notice. (Tr. 28 - 35)

After reviewing Department Counsel's notice and the cited source documents, the following pertinent facts regarding Nigeria are noted:

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<sup>2</sup> Prehearing scheduling correspondence, the notice of hearing, and case management order are attached to the record as Hearing Exhibits (Hx.) I – III, respectively.

<sup>3</sup> Ax. 1 – 6 were originally attached to the Answer.

<sup>4</sup> Tr. 110-113, 123-129.

<sup>5</sup> See ISCR Case No. 08-09480 (App. Bd. Mar. 17, 2010); ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007). See also, Directive, Enclosure 3, ¶ E3.1.19 (the Federal Rules of Evidence (F.R.E.) shall serve as a guide in DOHA proceedings and technical rules of evidence may be relaxed to permit the development of a full and complete record); F.R.E. 201; F.R.E. 1006.

Nigeria is a federal republic and gained its independence from Britain in 1960. Since gaining its independence, Nigeria has faced many challenges, including terrorist activity, sectarian conflicts, entrenched corruption, and widespread mistrust of the government. Nigerian security forces, particularly the police, have been accused of serious human rights abuses.

Boko Haram, a U.S.-designated Foreign Terrorist Organization, has grown increasingly active and deadly in its attacks against state and civilian targets, primarily northern Nigerian states. In 2014, the group's abduction of almost 300 schoolgirls drew international attention. The United States has established a strategic dialogue with Nigeria to address issues of mutual concern.

In general, the security situation in Nigeria remains fluid and unpredictable. The U.S. State Department warns U.S. citizens to avoid travel to a number of Nigerian states because of the risk of kidnapping, robberies, and other armed attacks.

### **Findings of Fact**

Applicant is in his early forties. He was born in Nigeria, immigrated to the United States in 1997, and is a naturalized U.S. citizen. He earned a bachelor's degree in accounting and finance from a U.S. college in 2001, and then embarked on a professional career. He was gainfully employed from 2002 to 2009. He was unemployed or underemployed from about 2009 to 2012. Applicant regained full-time employment in April 2012 and, as of the hearing, had been with his current employer for about nine months. He was previously granted a position of trust and has a pending job offer contingent on attaining a security clearance. (Tr. 37-45; Gx. 1 - 2; Ax. B)

Applicant has filed for bankruptcy twice in the past 11 years. In 2005, he filed for Chapter 7 bankruptcy to resolve debts that he accumulated after graduating from college. He states that his finances were negatively impacted after his child was born and he incurred a sizeable child support obligation. He also admits that he mismanaged his financial affairs, all of which lead him to file for bankruptcy. He subsequently received a Chapter 7 bankruptcy discharge. (Tr. 48-49)<sup>6</sup>

In March 2012, Applicant submitted a security clearance application (SCA). He listed a number of delinquent debts, including past-due child support, a civil judgment from 2011, and collection accounts for consumer-related debt. He indicated that his plan was to contact his overdue creditors with the assistance of a non-profit agency, consolidate his debts, and pay them through a 60-month installment agreement. (Gx. 1)

Applicant filed a Chapter 13 bankruptcy petition in May 2012. His Chapter 13 bankruptcy plan was confirmed in January 2013. He was required to pay \$100 a month for 60 months to the bankruptcy trustee. (Gx. 5; Ax. F; Ax. G)

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<sup>6</sup> No documents were presented regarding the 2005 bankruptcy. Applicant denies recalling the particulars of the bankruptcy, including the amount of total debt discharged. (Tr. 53-54)

Applicant was subsequently advised that he was eligible to convert to Chapter 7, did so, and, in May 2015, his debts were discharged through Chapter 7 bankruptcy. (Gx. 5; Ax. 4) Applicant claims that the 18 delinquent consumer-related debts listed on the SOR for credit cards, overdraft fees, payday loans, etc., were listed on his bankruptcy petition and discharged in bankruptcy. (Tr. 87-90) He did not provide a copy of the bankruptcy petition or list of consumer-related debts that were discharged.

As Applicant noted on his 2012 SCA, his court-ordered child support also became delinquent. The SCA reflects a past-due amount totaling approximately \$4,000. (Gx. 1 at 61) Applicant submitted documentation from the child support enforcement agency, which reflects that, as of May 2015, Applicant's child support arrears totaled over \$12,500. (Ax. 2) He submitted documentation at hearing which reflects that, as of December 2015, the balance had been reduced to \$6,300. His pay was being garnished pursuant to an income withholding order to satisfy his child support. (Ax. K at 44; Ax. L)<sup>7</sup>

Applicant earns an annual salary of approximately \$93,000. He took the bankruptcy court-mandated online credit counseling. He claims that he and his wife use a written budget to manage their finances, and after paying recurring expenses and debts, have approximately \$2,000 a month in disposable income. (Tr. 80-84; Ax. 3) When asked by Department Counsel if he had a savings account, Applicant responded that he did and noted the account had a balance of approximately \$10. (Tr. 85) Currently, Applicant has over \$100,000 in student loan debt that is in deferment status. As of the hearing, the deferment was scheduled to end in June or July 2016. (Tr. 90-92; Gx. 2 at 11)<sup>8</sup> Applicant testified that nine of the listed SOR debts were related to credit card accounts that had gone delinquent and were subsequently discharged through bankruptcy. (Tr. 65-80; Gx 2 at 9-14) He now has six credit cards. When asked by Department Counsel why he had so many open credit card accounts, Applicant responded that he was offered the credit cards and accepted the offers. (Tr. 70)

Applicant's parents and four living siblings are citizens and residents of Nigeria. They live in the southern part of the country. Applicant has only visited Nigeria twice since immigrating to the United States.<sup>9</sup> He provides about \$1,000 a month in financial support to his parents. He also provides sporadic financial support to one of his siblings. (Tr. 93-94, 106) None of his family in Nigeria is connected to the government.

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<sup>7</sup> Applicant's December 24, 2015 and February 5, 2016 pay stubs from his current employer do not reflect that his child support is being properly deducted from his pay. (Ax. L at 46-47) It is generally well recognized that an individual, such as Applicant, must voluntarily submit the required payments until the income withholding order is transferred to their new employer. Applicant did not submit documentation post-December 2015 reflecting the balance on his child support account or that he was making the required payments to avoid once again falling behind on his court-ordered child support.

<sup>8</sup> Applicant's December 2015 credit report reflects an outstanding balance of over \$295,000 for a student loan account. (Gx. 5, trade line 5)

<sup>9</sup> One of the trips Applicant took to Nigeria was for his half-brother's funeral. Applicant's half-brother, who is referenced in SOR 2.c, passed away nearly a year before the SOR was issued.

Applicant is married. His wife is originally from the Philippines. She is a permanent U.S. resident. Applicant's mother-in-law recently passed away. Applicant and his wife relied on their credit cards to pay for the travel and funeral-related expenses. Applicant's wife and her siblings, who are resident-citizens of the Philippines, are estranged from their father. None of his wife's family in the Philippines is connected to the national government or other foreign entity that would raise a security concern.

## **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

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. 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 an 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.

## Analysis

### Guideline F, Financial Considerations

The security concern under this guideline is explained at 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 financial considerations security concern is not limited to a consideration of whether an individual with financial problems might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which an individual's delinquent debts cast doubt upon their judgment, self-control, and other qualities essential to protecting classified information.<sup>10</sup>

Applicant's history of financial issues, which has twice has led him to file for bankruptcy, implicates the financial considerations security concern. The record evidence also raises the disqualifying conditions listed at AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

The financial considerations guideline lists a number of conditions that could mitigate the security concern. The following mitigating conditions were potentially raised by the evidence:

AG ¶ 20(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;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(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; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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<sup>10</sup> ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

Applicant's most recent financial problems were attributable to long-term unemployment and underemployment. He took responsible action after regaining full-time employment in 2012, to resolve his delinquent debts by filing for Chapter 13 bankruptcy. He paid his debts through a confirmed Chapter 13 plan for a number of years, and after becoming eligible to convert to Chapter 7, resolved his dischargeable debts through Chapter 7. AG ¶¶ 20(b) and 20(d) apply.

Although Applicant has a finance degree and has received financial counseling, the record evidence and his testimony reflect a lack of true financial reform. For instance, after recently receiving a second Chapter 7 bankruptcy discharge, Applicant opened six separate credit card accounts. Notwithstanding full-time employment since 2012, purported \$2,000 a month in disposable income, and a sizeable amount of student loan debt due to be repaid in the near future, Applicant reported just \$10 in savings. In light of Applicant's adverse financial history, including failure to timely pay his court-ordered child support, I cannot find that financial problems are unlikely to recur nor that his financial situation is under control. AG ¶¶ 20(a) and 20(c) do not apply.

After considering all the evidence, both favorable and unfavorable, including the whole-person factors further discussed herein, Applicant failed to meet his burden of persuasion in mitigating the financial considerations security concerns.

### **Guideline B, Foreign Influence**

The foreign influence security concern is explained at 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.<sup>11</sup>

Applicant's relationship with his family in Nigeria and to a lesser extent his connection to his wife's family in the Philippines raise the foreign influence security concern. An individual is not automatically disqualified from holding a security clearance because they have connections and contacts in a foreign country. Instead, in assessing an individual's vulnerability to foreign influence, an administrative judge must take into

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<sup>11</sup> See also, ISCR Case No. 09-07565 at 3 (App. Bd. July 12, 2012) ("As the Supreme Court stated in *Egan*, a clearance adjudication may be based not only upon conduct but also upon circumstances unrelated to conduct, *such as the foreign residence of an applicant's close relatives.*") (emphasis added).

account the foreign government involved, the intelligence-gathering history of that government, the country's human rights record, and other pertinent factors.<sup>12</sup>

An individual with family members and other connections in a foreign country faces a high, but not insurmountable hurdle in mitigating security concerns raised by such foreign ties. An applicant is not required "to sever all ties with a foreign country before he or she can be granted access to classified information."<sup>13</sup> However, what factor or combination of factors will mitigate security concerns raised by an applicant with family members in a foreign country is not easily identifiable or quantifiable.<sup>14</sup>

The relationship between the United States and the foreign countries at issue are generally recognized to be friendly. However, foreign influence security concerns are not limited to countries hostile to the United States. The Appeal Board has cautioned against the overreliance on "simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B," because such "ignores the historical reality that (i) relations between nations can shift, sometimes dramatically and unexpectedly; (ii) even friendly nations can have profound disagreements with the United States over matters that they view as important to their vital interests or national security; and (iii) not all cases of espionage against the United States have involved nations that were hostile to the United States." ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

Additionally, Applicant's relationship with his parents and siblings, coupled with the facts administratively noticed regarding Nigeria, raise a heightened risk of foreign influence. Applicant's foreign familial ties raise the following disqualifying conditions:

AG ¶ 7(a): contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

AG ¶ 7(b): connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Guideline B also sets forth a number of conditions that may mitigate the foreign influence security concern. I have considered all the mitigating conditions in assessing the security concerns in the present case, including the following:

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<sup>12</sup> ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007) (setting forth factors an administrative judge must consider in foreign influence cases).

<sup>13</sup> ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

<sup>14</sup> ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).



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.;

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; and

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.

Applicant mitigated the security concerns raised by his connections and contacts to his wife's family in the Philippines. AG ¶¶ 8(a), 8(b), and 8(c) apply to these foreign familial connections.

On the other hand, Applicant did not mitigate the security concerns raised by his close familial connections and contacts in Nigeria. Applicant's relationship with his foreign relatives in Nigeria is not so minimal that, in light of the matters administratively noticed, such relationship could not pose a potential conflict of interest with his obligation to safeguard classified information. Of note, notwithstanding his own dire financial problems, Applicant financially supports his relatives in Nigeria. Although such financial support raises favorable inferences regarding Applicant's character, it also highlights his particular vulnerability to foreign influence.

After considering all the evidence, both favorable and unfavorable, including the whole-person factors further discussed herein, Applicant failed to meet his burden of persuasion in mitigating the foreign influence security concerns. This adverse finding, however, is *not* a comment on Applicant's patriotism or loyalty, but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member. ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009).

### **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 an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a). I hereby incorporate the preceding analysis under the guidelines at issue and highlight some additional whole-person factors.

Applicant was honest and cooperative throughout the security clearance process. He was previously granted eligibility for access to sensitive U.S. Government information and has apparently handled such information without issue. Notwithstanding this and other favorable record evidence, Applicant failed to meet his heavy burden of persuasion for access to classified information. His financial situation and foreign familial connections remain a security concern. Overall, the record evidence leaves me with doubts about his present 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:

Paragraph 1, Guideline F (Financial Considerations)	AGAINST APPLICANT
Subparagraphs 1.a, 1.d, and 1.e:	Against Applicant
Subparagraphs 1.b, 1.c, and 1.f – 1.u:	For Applicant
Paragraph 2, Guideline B (Foreign Influence):	AGAINST APPLICANT
Subparagraphs 2.a – 2.b:	Against Applicant
Subparagraphs 2.c – 2.f:	For Applicant

### **Conclusion**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge