



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No.14-06921

Appearances

For Government: Caroline E. Heintzelman, Esq. Department Counsel
For Applicant: *Pro se*

01/13/2017

Decision

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations) and Guideline B (Foreign Influence). The SOR was dated September 19, 2015. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR¹ and requested a decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant

¹Department counsel amended the SOR by adding allegation 2.b under foreign influence stating that Applicant's mother-in-law and father-in-law are citizens and residents of Nigeria.

Material, (FORM), dated March 29, 2016.² Applicant received the FORM on April 1, 2016. Applicant responded to the FORM and submitted information that is included in the record. The case was assigned to me on November 8, 2016. Based on a review of the case file, eligibility for access to classified information is granted.

Procedural Issues

Department Counsel requested that I take administrative notice of relevant facts about the Federal Republic of Nigeria. The request and supporting documentation are in the FORM as (Item 8-9). Applicant provided no objection. I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below.

Findings of Fact

In his answer to the SOR, Applicant admitted allegations 1.a and 1.b. He provided explanations for the allegations under Guideline F (Financial Considerations). He denied allegations 2.a and 2.b and provided explanations. (Item 2)

Applicant is a 65-year-old engineer for a defense contractor. He is separated from his Nigerian born wife, who is a naturalized U.S. citizen, with two children born in the United States.³ He received his associate and his undergraduate degrees from American colleges. Applicant continues to take graduate courses. (Item 3) He has worked for his current employer since 2013. (Item 3) He has held a security clearance since 2006. Applicant completed a security clearance application in April 2014. (Item 3)

Financial Considerations

The SOR alleges two delinquent debts including a charged-off account in the amount of \$76,127. The Government agreed that the debt in SOR 1.b for \$269 is resolved. (FORM)

In his answer to the SOR Applicant admitted the debts on the SOR. He stated that he co-signed his son's school loan in the amount of \$40,000. His son did not follow through with a repayment schedule after his graduation. Applicant learned about the debt, and in 2015 he signed an agreement to settle the debt for \$30,824. He provided the agreement, and in response to the FORM, he submitted the account activity sheet reflecting consistent monthly payments of \$250 since April 2015. A payment of \$1,000 was made in early 2015.⁴ A total of \$9,148 has been paid as of April 2016. The accrued interest adds about \$14,000 to the debt.

²The Government submitted nine items for the record.

³He is widowed from his first spouse who died in 1979 and was born in the United States.

⁴The account activity sheet also noted payments from 2011, 2012, and 2013. It appears that no payments were made in 2014.

During his 2013 investigative interview, Applicant noted his unemployment from May 2010 through January 2012. He received unemployment benefits and personal savings while unemployed. He explained in detail about the student loan that he cosigned for his eldest son. He took responsibility for the loan payments. He is aware of his responsibility to bring his delinquent debts current. (Item 4) The 2016 credit bureau report in the file shows all accounts with zero past-due balances, with the exception of the prior missed payments for the student loan. (Item 6)

Foreign Influence

The SOR alleges that Applicant's brothers, sisters and in-laws are citizens and residents of Nigeria. The SOR was amended to allege that his mother-in-law and father-in-law are citizens and residents of Nigeria. Applicant acknowledged the existence of his relatives in Nigeria, but denies that they create a risk of foreign influence. (Item 4)

Applicant, who was born in Nigeria in 1951, came to the United States in July 1977. He became a U.S. citizen in 1993, and as mentioned, was educated in the United States. He does not consider himself a dual citizen. He has held a U.S. passport since 2004. He served as a government contractor in Afghanistan from 2005 until 2010. Applicant married his second wife in 1994 in the United States. His wife is a naturalized U.S. citizen. He disclosed the certificate number of her naturalization on his security clearance application. He also noted that they separated in 2007, and have lived apart. From that marriage he has two children who were born in the United States. He has no recent interaction with his in-laws who live in Nigeria. Applicant noted a telephone interaction in 2011.

Applicant disclosed on his security clearance application that he has two sisters and two brothers who are citizens and residents of Nigeria. None of them have knowledge of his work. None of them were in the military. (Item 3) He noted that they are not affiliated with any political organization.

His older brother is retired, and Applicant noted that he last spoke to him on the telephone in 2011. They talk about family celebrations or bereavement. His younger brother works for the Lagos Ministry Bureau of Tourism. Applicant listed his last contact by phone in 2012. He noted for both brothers that he has contact by phone maybe four times a year. (Item 3)

Applicant has a sister who is a retired from a teaching hospital. She visits him in the United States. He talks on the phone with her and listed the last contact as 2012. Applicant's other sister maintains phone contact with him on an annual basis. (Item 3)

Applicant's 2014 security application listed his mother-in-law and father-in-law who had contact rarely or occasionally with them by phone. His last contact by phone with her was listed in 2011. In his response to the FORM, notarized, and dated April 2016, he wrote that he has no contact of any kind between them. (Response to FORM)

Applicant noted that he has no foreign interest or real estate in Nigeria. He has not provided financial support to any foreign national. He has had no foreign government contact. (Item 3)

In a Report of Investigation (ROI), dated 2005, Applicant was interviewed extensively and noted his family members in Nigeria. He also stated that he had no relatives associated with any foreign government. Also, the ROI mentioned that "he has not failed to report, where required, any association with foreign nationals." (Item 5)

When Applicant answered the SOR, and in his response to the FORM, he stated he could not be placed in a position of having to choose between the interest of his siblings or the government and the interests of the United States. (Item 2) He also stated that he has such a longstanding relationship and loyalty to the United States that he can be expected to resolve any conflict of interest in favor of the United States. He stated his communications with his siblings is casual and infrequent. (Item 2)

Administrative Notice

Nigeria, a federal republic, 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, is a violent Islamist movement in northern Nigeria. It has grown increasingly active and deadly in its attacks against state and civilian targets in recent years. 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.

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

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

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ."⁵ The burden of proof is something less than a preponderance of evidence.⁶ The ultimate burden of persuasion is on the applicant.⁷

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."⁸ "The clearly consistent standard indicates that security clearance

⁵ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

determinations should err, if they must, on the side of denials.”⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.¹⁰ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

⁹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁰ *Id.*

(f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

(h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

The Government produced credible evidence to establish the delinquent debt. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate the security concerns:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

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

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(f) the affluence resulted from a legal source of income.

Applicant cosigned a student loan for his son. He expected that his son would make the payments. When Applicant learned that he did not, he made an agreement and is making payments. He provided sufficient evidence of his good-faith effort to do so. He also had unemployment, which explains some earlier financial difficulty that he had. He was not aware of the other debt and had already provided documentation that it was paid. The government stipulated to this issue. His current credit report shows all accounts, with the exception of the student loan, as having a zero balance. Mitigating conditions AG 20 (a), (b), (d) and (e) apply.

Guideline B, Foreign Influence

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.

Two disqualifying conditions under this guideline are relevant. 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). In addition, AG ¶ 7(b) provides that “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(a) and 7(b) are raised by Applicant’s relationship with his four siblings who are citizens and residents of Nigeria. His past contact with his in-laws might also be included.

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).

The Government submitted country summaries of Nigeria. Record evidence places a burden of persuasion on Applicant to demonstrate that his relationship with his siblings living in Nigeria does not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his siblings living in Nigeria.

I conclude that Applicant's ties are sufficient to raise an issue of a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. This relationship with his relatives in Nigeria creates a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his siblings in Nigeria..

The mere possession of close ties with a family member in Nigeria is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could possibly result in the compromise of classified information. See *generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case NO. 99-0424 (App. Bd. Feb. 8, 2001).

While there is no evidence that intelligence operatives, terrorists, or criminals from Nigeria seek or have sought classified or economic information from or through Applicant or his family, it is not possible to rule out such a possibility in the future. Applicant's one sister visits the United States, and he has telephonic contact with the four siblings. The Government produced evidence to raise the potential of foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

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 also 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).

AG ¶¶ 8(a), and 8(b), are applicable. Applicant’s sisters and brothers have no connections to the foreign government. Applicant maintains some contact with them, but he has not traveled to Nigeria to visit them. He is separated from his wife who was born in Nigeria but is a naturalized citizen. His two children are U.S. citizens. Applicant’s last contact with his in-laws was in 2011. He has no real contact between them since he is separated from his wife. The amount of contacts between an applicant and relatives living in a foreign country are not the only test for determining whether someone could be coerced or influenced through their relatives.

AG ¶ 8(b) is applicable. Applicant expressed his loyalty to the United States. He is a naturalized citizen who has lived and worked in the U.S. since 1977. He has worked abroad for a U.S. contractor and has held a security clearance. Nigeria is an ally of the United States with mutual defense and strategic interests. Nigeria is a trading partner of the United States and cooperates with the United States on many military matters. A friendly relationship is not determinative, but it makes it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that country. I have also considered the ongoing situation in Nigeria with an unstable government, extensive terrorist activities, and human rights issues. Even though Nigeria is not a hostile country and its interests are not inimical to the United States, it is reasonable to consider that the situation and groups in Nigeria could take an action that may jeopardize their friendly position with the United States. There are some indications that elements in Nigeria could seek sensitive information from their citizens who have family in the United States.

Applicant has strong ties to the United States. He left Nigeria and has been in the United States for the greater part of his life. He was educated in the United States. He has worked in the defense field for a number of years and has held a clearance. He is a naturalized citizen who has spent about 33 years working in this country. His children are U.S. citizens. He has no financial interests in Nigeria. He has firm ties to the United States and considers it his home.

Applicant’s loyalty to the United States is such that he can be expected to resolve any conflict of interest in favor of the United States interest. There is minimal risk to the national interest if Applicant has access to classified information. Applicant has met his heavy burden to show that his siblings and his in-laws living in Nigeria does not cause a security concern.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is 65 years old. He is an educated man who received his education in the United States. He has worked for his current employer since 2013. He cosigned his son's student loans and accepted the responsibility to repay them when his son defaulted. He resolved the other SOR debt.

Applicant is a naturalized U.S. citizen who has lived and worked in the United States since 1977. He has two children who are U.S. citizens. He is separated from his wife who was born in Nigeria, but who is also a naturalized U.S. citizen. His professional and personal life are in the United States. He worked for a defense company in Afghanistan. He stated that his four siblings in Nigeria and his former-in-laws would not present a conflict of interest for him. He has held a security clearance for a number of years.

Applicant chose to leave Nigeria. He has no financial interests in Nigeria. His career is in the United States. Although he has four siblings in Nigeria and 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 siblings do not know the specifics of his work.

After weighing the disqualifying and mitigating conditions under Guideline F and B, and evaluating all the record evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns under both guidelines. Accordingly, I conclude that 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

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:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

NOREEN A. LYNCH
Administrative Judge