



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04105

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: Ronald C. Sykstus, Esquire

09/14/2017

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence and foreign preference. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On March 24, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On December 8, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006.² The SOR

¹ GE 1 (e-QIP, dated March 24, 2014).

alleged security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference) and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on December 16, 2015. In a sworn statement, dated December 23, 2015, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on May 16, 2016. The case was assigned to me on August 4, 2016. A Notice of Hearing was issued on August 31, 2016. I convened the hearing as scheduled on September 21, 2016.

During the hearing, 2 Government exhibits (GE) 1 and GE 2, 1 Administrative exhibit, and 19 Applicant exhibits (AE) A through AE S were admitted into evidence without objection. Applicant and six witnesses testified. The transcript (Tr.) was received on September 29, 2016. The record closed on September 21, 2016.

Rulings on Procedure

Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to the Federal Republic of Nigeria (Nigeria) appearing in seven U.S. Government publications which were identified, but only fragments of extracts of those publications were attached to the request. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the Government relied on source information regarding Nigeria in publications of the U.S. Department of State,³ the Congressional Research Service,⁴ and the Office of the Director of National Intelligence.⁵ After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I

² Effective June 8, 2017, by Directive 4 of the Security Executive Agent (SEAD 4), dated December 10, 2016, *National Security Adjudicative Guidelines* (AG) for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, were established to supersede all previously issued national security adjudicative criteria or guidelines. Accordingly, those guidelines previously implemented on September 1, 2006, under which this security clearance review case was initiated, no longer apply. In comparing the two versions, there is no substantial difference that might have a negative effect on Applicant in this case.

³ U.S. Department of State, Bureau of Consular Affairs, *Passports & International Travel, Alerts & Warnings: Nigeria*, dated February 5, 2016; U.S. Department of State, *Quick Facts: Nigeria*, dated January 21, 2016; U.S. Department of State, Bureau of Counterterrorism, Ch. 2, Country Reports: Africa Overview, *Country Reports on Terrorism 2014: Africa*, undated; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Executive Summary, Country Reports on *Human Rights Practices for 2014: Nigeria*, undated.

⁴ Congressional Research Service, Library of Congress, *Nigeria: Current Issues and U.S. Policy*, dated July 18, 2012; Congressional Research Service, Library of Congress, *Nigeria's Boko Haram: Frequently Asked Questions*, dated June 10, 2014.

⁵ Office of the Director of National Intelligence, Statement for the Record: *Worldwide Threat Assessment of the US Intelligence Community for the Senate Select Committee on Intelligence*, dated January 29, 2014.

take administrative notice of certain facts,⁶ as set forth below under the Nigeria subsection.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with comments, the factual allegations pertaining to foreign preference (§ 1.a.) and foreign influence (§ 2.a.) of the SOR. Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 39-year-old employee of a defense contractor. He has been serving as a radar analyst since July 2012, and previously held positions as a system engineer or engineer with other employers since 2005. He has never served with the U.S. military or any other military. He is a 1996 high school graduate from a Nigerian high school. Applicant received a bachelor of science degree in electrical engineering in 2002, and a master's degree in electrical engineering in 2016, from a university in the United States. He was on the Dean's List for both degrees. He was granted a secret security clearance in 2005.

Foreign Influence⁷

Applicant was born in 1978 in the United States to Nigerian citizens who were in the United States attending a U.S. university. As such, he is a native-born U.S. citizen as well as a dual Nigerian citizen through his parents' citizenship. Applicant's parents returned to Nigeria upon the completion of their studies in 1981 or 1982, and Applicant accompanied them there. He resided in Nigeria with his parents until 1998, and returned to the United States to complete his education. In 2009, in the United States, he married a Nigerian citizen whom he had previously met at the university where his father teaches. Applicant's wife – now a nurse at a local hospital – became a naturalized U.S. citizen in 2015. When she became a naturalized U.S. citizen, she took an oath of allegiance to the United States. That oath included the words: "I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen."⁸ Applicant and his wife have three children born in the United States: sons born

⁶ Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Requests for administrative notice may utilize authoritative information or sources from the internet. See, e.g. *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006) (citing internet sources for numerous documents). In this instance, although Department Counsel has selected only certain pages of facts appearing in the identified publications, I have not limited myself to only those facts, but have considered the publications in their entirety.

⁷ General source information pertaining to Applicant and his family members discussed below can be found in the following exhibits: GE 1, *supra* note 1; and GE 2 (Personal Subject Interview, dated April 15, 2015).

⁸ 8 C.F.R. § 337.1(a) (1995).

in 2010 and 2011, and a daughter born in 2016. One of Applicant's brothers is a native-born citizen of Canada who resides in Canada where he is a sales representative for a Canadian company.

Since he returned from Nigeria to attend the university, Applicant has visited Nigeria on four occasions: 2002-2003, 2005-2006, 2012, and 2014-2015. He has no plans to return to Nigeria any time soon.

There are six other members of Applicant's family who remain citizen-residents of Nigeria, in areas relatively distant from publicized terrorist activities. His father is a university professor teaching agricultural economics. His mother is a homemaker who Applicant described as retired. Applicant's other brother is a graduate student. His sister is employed in the human resources department of a non-governmental company. Applicant's father-in-law is either a retired or unemployed engineer. His mother-in-law is a homemaker and retired teacher. Applicant's family members have never had any affiliation with the Nigerian Government or intelligence service. The frequency of Applicant's on-going contacts with the members of his family is varied. He speaks with some members on a weekly basis, and other members on a monthly basis.

Applicant contends that he has strong connections to the United States, and he considers them to be stronger than his connections to Nigeria. He was born here, has made his home here, and is raising his family here. He greatly values this country, and he will always be loyal to the U.S. He is willing to formally renounce his Nigerian citizenship. Applicant has no assets or financial interests in Nigeria. His financial interests and investments in the United States are generally as follows: approximately \$127,000 in real estate (with a \$101,000 mortgage); \$75,914 in retirement accounts; and \$22,000 in an employee stock ownership plan.

Foreign Preference

Applicant was uncertain if he had received a Nigerian passport shortly after his birth, but he acknowledged that he had obtained a Nigerian passport in 2002, and renewed it in 2012. He obtained his U.S. passport in 2007. Applicant used his Nigerian passport on several occasions when traveling to Nigeria to visit his parents. He did so for three basic reasons: (1) it is more convenient to do so when entering Nigeria; (2) goods and services are more expensive in Nigeria when presenting a U.S. passport; and (3) U.S. passports are targets for theft in Nigeria. Applicant was unaware of the implications of possessing and using his Nigerian passport, and once the security concerns were made known to him, on December 21, 2015, he surrendered not only his own Nigerian passport, but also the Nigerian passports of his wife and children to his facility security officer.⁹

Applicant has never voted in any Nigerian elections. He has never owned any property in Nigeria. He has no retirement benefits in Nigeria.

⁹ AE A (Memorandum, dated December 21, 2015). It should be noted that Applicant attached a photocopy of the memorandum to his Answer to the SOR.

Nigeria

Nigeria is a federal republic that gained independence from the United Kingdom in 1960 after over a century of being under British influence, as a colony, and as a protectorate. The dominant ethnic group in the northern two-thirds of the country is Hausa-Fulani, most of whom are Muslims. The Yoruba people, about half of whom are Christian and the other half Muslim, predominate the southwestern and north-central regions. It is a key power in Africa due to its size and political and economic role in the region. It is sub-Saharan Africa's second largest economy and a major crude oil producer. Despite its oil wealth, Nigeria remains underdeveloped.

Nigeria suffers from political instability, economic crisis, ethnic and religious conflict, extreme poverty, lack of law and order, judicial corruption and a history of military coups. Lawless elements have engaged in kidnapping for ransom in the Niger Delta area. Heavily armed rival militias engage in conflict. The Nigerian government has committed human rights violations, and security forces have committed politically motivated, extrajudicial killings as well as torture and arbitrary arrest. Boko Haram, an Islamic extremist, terrorist group – designated as a Foreign Terrorist Organization by the U.S. State Department in 2013 – operates with near impunity, as the central government lacks the resources to adequately confront them. Boko Haram has pledged allegiance to the Islamic State of Iraq and the Levant (ISIL), and foments instability in Northern Nigeria, attacking predominantly Christian villages, planting car bombs near markets and government facilities, and abducting young women, forcing them into sex slavery. The U.S. State Department recommends avoiding travel to certain areas of Nigeria due to the increased risk of kidnapping, robbery, and other armed attacks.

Nigeria's foreign policy has been characterized by a focus on Africa and adherence to several fundamental principles: African unity and independence; peaceful settlement of disputes; nonalignment and nonintentional interference in the internal affairs of other nations; and regional economic cooperation and development. It has provided strong diplomatic support to U.S. Government counter-terrorism efforts.

The United States considers its strategic relationship with Nigeria to be among the most important on the African continent. Relations between the two nations have steadily improved since 1999, with the resumption of basic democracy in Nigeria. An estimated one million Nigerians and Nigerians-Americans live, study, and work in the United States; while over 25,000 Americans live and work in Nigeria. Nigeria is not a known collector of U.S. intelligence or sensitive economic information. Nigeria is not known to target U.S. citizens to obtain protected information.

Character References

Applicant's current program manager and direct supervisor characterized Applicant as professional, reliable, consistent, thorough, and trustworthy, and noted that Applicant receives "five-star feedback" from customers and team leads regarding

Applicant's performance, work quality, ethics, and "teamsmanship."¹⁰ Applicant's direct supervisor and technical leader for his former employer has known Applicant since he was initially hired in 2009. Applicant was an excellent worker, and he would have no security concerns regarding Applicant.¹¹ The director of software engineering, who is also Applicant's current second level supervisor (and former direct supervisor), considers Applicant to be a stellar performer who takes his work seriously.¹² Applicant's pastor has known Applicant for eight years. Applicant serves as the church administrator. He is very committed to his faith and to the religious tenants. He has a very good reputation among the church members, and is very truthful.¹³ Applicant received an "extra Mile Award" from his church for his outstanding vision, support, inspiration, dedication, and commitment to excellence.¹⁴ Applicant's earlier performance appraisals reflect overall ratings that improved from good to very good, and they mention that he is dependable and hardworking.¹⁵ In 2012, his current employer rated him a high performer.¹⁶

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."¹⁷ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."¹⁸

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

¹⁰ Tr. at 54-58; AE S (Evaluation Summary, dated September 15, 2016).

¹¹ Tr. at 58-61.

¹² Tr. at 62-68.

¹³ Tr. at 68-71.

¹⁴ AE N (Certificate, dated February 14, 2015).

¹⁵ AE M (Performance Evaluation, dated June 2005); AE L (Performance Evaluation, dated June 2006); AE K (Performance Evaluation, dated June 2007).

¹⁶ AE J (Performance Appraisal, dated January 10, 2013).

¹⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁸ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."¹⁹ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.²⁰

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."²¹

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."²² Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

¹⁹ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

²⁰ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²¹ *Egan*, 484 U.S. at 531.

²² See Exec. Or. 10865 § 7.

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6.

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes a condition that could raise security concerns under AG ¶ 7:

(a) contact, regardless of method, 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.

Applicant's mother, father, brother, sister, father-in-law, and mother-in-law are Nigerian citizens who reside in Nigeria. When foreign family ties are involved, the totality of an applicant's family ties to a foreign country as well as each individual family member must be analyzed.²³ If only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.²⁴ The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. Moreover, Guideline B is not limited to countries hostile to the United States.²⁵ Furthermore, "even friendly countries can have profound disagreements with the United States over matters they view as important to their vital interests or national security."²⁶ Friendly nations have engaged in espionage against the

²³ ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

²⁴ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

²⁵ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004) ("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.").

²⁶ ISCR Case No. 00-00317 at 6 (App. Bd. Mar. 29, 2002).

United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the United States, 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 United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue.²⁷

As noted above, there is no evidence to reflect that Nigeria engages in economic espionage, industrial espionage, trade secret theft, violations of export-control regulations, and military intelligence activity directed toward the United States. There is, however, substantial evidence of terrorist activities within certain areas of the country. The activities of Nigerian authorities as well as those insurgent and terrorist groups, the risks of kidnappings by gangs, and the danger of Boko Haram and other radicalized ISIL sympathizers in Nigeria are sufficient to establish a "heightened risk" – a risk that is greater than the normal risk inherent in having a family member living under a foreign government. In this instance, Applicant's relationships with his mother, father, brother, sister, father-in-law, and mother-in-law, are slightly varied, but they are essentially close, rather than casual. AG ¶ 7(a) has been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence under 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 United States; and

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

AG ¶¶ 8(a) and 8(b) apply. Applicant's ties to the United States run deep. He is a native-born U.S. citizen. His wife is a naturalized U.S. citizen, and their children are native-born U.S. citizens. They have embraced the United States as their home, and it is where they have dedicated their respective lives. They have no foreign business or financial assets in Nigeria. Applicant's mother, father, brother, sister, father-in-law, and mother-in-law have had no relationship with the Nigerian government or its military or intelligence

²⁷ See ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

services. There is no evidence that they have ever been approached or threatened by a terrorist or anyone affiliated with the Nigerian government, its military, or intelligence services. They reside in areas relatively distant from publicized terrorist activities.

The Government has submitted facts to reflect that Nigeria does not engage in economic espionage and military intelligence activity directed toward the United States. However, there is evidence of the presence of insurgent groups, terrorists, and radicalized ISIL sympathizers operating within the borders of Nigeria that might heighten the risk for Applicant's mother, father, brother, sister, father-in-law, and mother-in-law residing in Nigeria. In such a situation, Nigeria and all its citizens become potential victims of terrorism. The terrorism situation is not unlike the situations in other countries that have seen acts of terrorism – France, United Kingdom, Germany, and Belgium – and yet, the “heightened risk” in those countries is considered reduced. In fact, just as U.S. law enforcement and the DOD strive to protect U.S. citizens from terrorists, incidents such as those in Fort Hood, Texas; San Bernardino, California; New York City, New York; and Dallas, Texas, have not raised the banner of “heightened risk” over the United States to suggest that it is unsafe to have family members reside here. With relatively low-profile family members, there is a very low potential of forcing Applicant to choose between the interests of the United States and those of Nigeria, a terrorist organization, or those family members.

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9.

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself*, the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

The guideline notes several conditions that could raise security concerns under AG ¶ 10:

(b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States; and

(c) failure to use a U.S. passport when entering or exiting the U.S.

As noted above, Applicant was uncertain if he had received a Nigerian passport shortly after his birth, but he acknowledged that he had obtained a Nigerian passport in 2002, and renewed it in 2012. He obtained his U.S. passport in 2007. Applicant used his Nigerian passport on several occasions when traveling to Nigeria to visit his parents. He did so for three basic reasons: (1) it is more convenient to do so when entering Nigeria; (2) goods and services are more expensive in Nigeria when presenting a U.S. passport; and (3) U.S. passports are targets for theft in Nigeria. Applicant was unaware of the implications of possessing and using his Nigerian passport. AG ¶¶ 10(b) and 10(c) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign preference under AG ¶ 11:

(b) dual citizenship is based solely on parental citizenship or birth in a foreign country, and there is no evidence of foreign preference; and

(c) the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests;

AG ¶¶ 11(b) and 11(c) apply. Applicant was born in the United States to Nigerian citizens who were in the United States attending a U.S. university. As such, he is a native-born U.S. citizen as well as a dual Nigerian citizen through his parents' citizenship. Once the security concerns of possessing and using a foreign passport were made known to him, on December 21, 2015, Applicant surrendered not only his own Nigerian passport, but also the Nigerian passports of his wife and children to his facility security officer. Applicant has expressed a willingness to renounce his Nigerian citizenship.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 2(d):

(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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have

evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.²⁸

There is some evidence against mitigating Applicant's situation. Applicant's mother, father, brother, sister, father-in-law, and mother-in-law are Nigerian citizens residing in Nigeria. While there is no evidence that Nigeria engages in economic espionage and military intelligence activity directed toward the United States, there are insurgent groups, terrorists, and radicalized ISIL sympathizers operating within the borders of Nigeria that might heighten the risk for Applicant's mother, father, brother, sister, father-in-law, and mother-in-law residing in Nigeria.

The mitigating evidence under the whole-person concept is more substantial. There is no evidence of misuse of information technology systems, or mishandling protected information. As noted above, Applicant's entire life is now centered in the United States. This is where he was born, where he obtained two university degrees, where he was married, where his three children were born (and are being raised), and where he and his wife are employed. Applicant, his wife, and children are involved in community and school affairs. Applicant is well respected by his friends and colleagues. He has an outstanding reputation with respect to ethics, work quality, dependability, and truthfulness. That he and his mother, father, brother, sister, father-in-law, and mother-in-law keep in relatively close contact should not be considered a negative factor.

Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his foreign influence and foreign preference concerns. See SEAD 4, App. A, ¶¶ 2(d)(1) through 2(d)(9).

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 C:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant

²⁸ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge