



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

ISCR Case No. 15-06811

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

03/16/2017

Decision

MALONE, Matthew E., Administrative Judge:

Available information is sufficient to mitigate the security concerns about the presence of Applicant's close relative in Nigeria. However, he did not mitigate the security concerns about his delinquent debts that he has not resolved despite having the means to do so. Applicant's request for a security clearance is denied.

Statement of the Case

On September 15, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew a security clearance required for his employment with a defense contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have a security clearance.¹

On April 20, 2016, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines² for foreign

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

² The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

influence (Guideline B) and financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing.

The case was assigned to me on September 21, 2016, and I convened a hearing in this matter on October 26, 2016. The parties appeared as scheduled, with Applicant appearing by video teleconference. Department Counsel presented Government Exhibits (Gx.) 1 - 5. Applicant testified in his own behalf and submitted Applicant's Exhibit (Ax.) A. All exhibits were admitted without objection. Additionally, Department Counsel requested that I take administrative notice of certain facts about the Federal Republic of Nigeria (Nigeria) that might be germane to this adjudication. The Government's request is supported by a legal memorandum and six attached documents included in the record as Gx. 6. After the hearing, Applicant submitted additional information that is admitted without objection as Ax. B.³ A transcript of the hearing (Tr.) was received on November 3, 2016.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$26,485 for five delinquent or past-due debts (SOR 1.a - 1.e). The mortgage-related debt at SOR 1.c (\$25,316) constitutes about 99 percent of the total amount at issue. Under Guideline B, the Government alleged that Applicant's mother is a citizen and resident of Nigeria (SOR 2.a). Applicant admitted, with explanations and remarks, all of the SOR allegations. (Answer) In addition to the facts thus established, I make the following additional findings of fact.

Applicant is 43 years old and works for a defense contractor specializing in overseas logistics support for the U.S. military. He has worked for his current employer since July 2011 after being unemployed for just over a year. He previously worked for another defense contractor in a similar capacity between December 2007 and May 2010, when the contract ended and he was laid off. (Gx. 1)

Applicant was born and raised in Nigeria. He came to the United States in July 1993 at age 19. He served on active duty in the U.S. Navy from December 1997 until being administratively separated in September 2007. Applicant was naturalized as a U.S. citizen in July 2004. He bought a home in the United States in 2005, and he has since paid off that mortgage. Since December 2007, Applicant has lived and worked overseas as an employee of defense contractors supporting U.S. military efforts. He periodically returns to the United States for regularly-scheduled periods of leave. Applicant testified that he has about \$500,000 in personal savings. (Gx. 1; 36 - 37, 74)

In 2006, while still on active duty, Applicant was approached by a fellow Navy member about investing in a residential subdivision development opportunity in which he was involved. Applicant obtained financing to purchase and build on a lot in that subdivision. His plan was to build and sell a new house, hoping for an estimated profit of \$50,000 based on existing market conditions. By the time the house was ready for sale, the housing market had begun its collapse. Applicant refinanced the mortgage to cash out about \$4,000 in equity to cover his mortgage for a few months. Thereafter, Applicant used his own money to pay the mortgage and eventually tried to rent the property. By sometime in 2008, he had to have the tenant evicted. Applicant was never able to negotiate a mortgage modification or short sale. The mortgage was foreclosed and the

³ Ax. B consists of emails proffered to corroborate his testimony about the debt alleged at SOR 1.c.

house sold at auction. The debt alleged at SOR 1.c likely represents the remaining deficiency on the mortgage. The state in which all of this occurred allows lenders to collect such deficiencies and the debt is still listed in his credit history. (Gx. 2 - 5; Tr. 34 - 36)

Applicant was overseas while the house was being built and relied on his Navy associate to handle the process of finalizing the mortgage, trying to sell the house, and refinancing the mortgage. Applicant gave his associate power of attorney to manage these affairs. The information Applicant submitted after the hearing is a collection of emails regarding the refinancing and attempts to sell the house. Applicant did not present any information showing what, if any, steps he has taken since the foreclosure to resolve the remaining mortgage deficiency after auction. (Ax. B; Tr. 41 - 53, 57 - 62, 72)

As a result of the foreclosure on his investment property, Applicant also incurred a state tax bill for \$575. As alleged at SOR 1.a, it remains unpaid. (Answer; Gx. 1 - 5)

The other debts alleged in the SOR are for delinquent cell phone (SOR 1.b), and natural gas (SOR 1.d and 1.e) services Applicant discontinued over the past ten years, ostensibly when he either was leaving the military or departing for another overseas civilian job. Applicant established that he has paid the gas bills. He also claimed to have paid the cell phone bill. Both allegations are resolved for Applicant. (Answer; Gx. 3 - 5; Tr. 33, 40)

Applicant's mother, a citizen of Nigeria, still resides in Nigeria. She is an octogenarian who rarely leaves her home because she is blind and inform. Her niece lives nearby and cares for her. Applicant's contact with his mother is irregular, but almost always occurs via telephone. Applicant stopped in Nigeria to visit his mother as he was returning to the United States to appear for his hearing in this matter. Applicant does not support his mother financially but has occasionally paid for unplanned expenses. (Answer; Gx. 1; Tr. 64 - 70)

In response to Department Counsel's request, I take administrative notice of the following facts about Nigeria contained in Gx. 6:

Since gaining independence from Great Britain in 1960, the Federal Republic of Nigeria has been beset by a host of internal problems, including government corruption, a poor economy, kidnappings, and communal violence. Only after the death of a military head of state in 1999 was a democratic style constitution and form of government put in place. However, the viability of democratic institutions has produced mixed results. Of late, Nigeria also has been subjected to violence perpetrated by Boko Haram, a violent terrorist group intent on imposing Islamic Sharif law in Nigeria. The Nigerian government's response to Boko Haram, an international terror organization, has only served to exacerbate an already poor human rights record. Abandonment of due process, extra-judicial killings, and other abuses by Nigerian government security forces have increased in the past few years, often under the guise of counter-terror activities. The U.S. State Department has issued multiple and detailed warnings to U.S. citizens traveling to Nigeria, and has advised they not travel at all to certain parts of the country.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁶ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁷

Analysis

Foreign Influence

The security concern about foreign influence is stated at AG ¶ 6:

⁴ See Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; AG ¶ 2(b).

[f]oreign 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.

More specifically, available information requires consideration of the following AG ¶ 7 disqualifying conditions:

- (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
- (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.

The SOR is supported by reliable information that showed his mother is a citizen of Nigeria who still resides there. Based on the available information about Nigeria, I conclude her presence there creates a heightened risk of coercion or exploitation. AG ¶¶ 7(a) and 7(b) apply.

Available information also requires application of the following AG ¶ 8 mitigating conditions:

- (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.;
- (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
- (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's relationship with his mother is close by definition. Nonetheless, it is not likely to cause a conflict between his obligation to protect classified information and the interests of the Nigerian government. Applicant's mother is old and infirm and it is unlikely she would be the target of coercive actions by the Nigerian government or by

groups such as Boko Haram. He has no regular contact with her and does not provide consistent financial support to her. By contrast, Applicant has lived and worked in the United States for 20 years. He also served in the U.S. military even before he became a citizen. He has substantial assets in the United States. His mother has no connections to the Nigerian government. The foregoing presents a sufficient basis for application of the cited mitigating conditions, and I conclude available information sufficiently mitigates the security concerns about Applicant's relatives in Nigeria.

Financial Considerations

Although Applicant has satisfied the personal debts at SOR 1.b, 1.d and 1.e, available information shows he still owes \$25,891 for the debts at SOR 1.a and 1.c. These facts reasonably raise a security concern about Applicant's finances that is addressed, in relevant part, at AG ¶ 18, as follows:

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. 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.

More specifically, the record as a whole requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG 19(c) (*a history of not meeting financial obligations*).

I have also considered the following pertinent AG ¶ 20 mitigating conditions:

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

Applicant made a poor investment choice when he decided to build a house as part of his friend's real estate venture while Applicant was living and working overseas. While one can question the wisdom of trying to manage such an enterprise by long distance, it is reasonable to assume that the deal went bad through unforeseen market conditions beyond Applicant's control. AG ¶¶ 20(a) and 20(b) are partially applicable

here. However, Applicant did not show that he has acted prudently in response to the foreclosure. The Government met its burden of proof in documenting the debts at SOR 1.a and 1.c, but Applicant did not present any information showing what he has done to resolve those problems. To his credit, he has paid off the mortgage on his principal residence, and he claims to have about \$500,000 in personal savings. On the other hand, he has not resolved a state tax lien stemming from his real estate venture and he has not contacted the creditor regarding a remaining deficiency after the house was sold at auction. All of the foregoing precludes full application of any of the AG 20 mitigating conditions. The security concerns about Applicant's finances remaining unresolved.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant has served in the United States military, and his civilian work provides direct support to ongoing military efforts abroad. Nonetheless, the fact that Applicant has not addressed lingering financial obligations despite having the means to do so underscores the doubts about his suitability for access that have been raised by the Government's information. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against the Applicant.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

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|------------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a, 1.c: | Against Applicant |
| Subparagraphs 1.b, 1.d, 1.e: | For Applicant |
| Paragraph 2, Guideline B: | FOR APPLICANT |
| Subparagraph 2.a: | For Applicant |

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge