



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-08248

Appearances

For Government: Michelle P. Tilford, Esq., Department Counsel
For Applicant: *Pro se*

12/28/2017

Decision

HARVEY, Mark, Administrative Judge:

Applicant mitigated foreign influence security concerns relating to her connections to Nigeria. Eligibility for access to classified information is granted.

Statement of the Case

On August 18, 2015, Applicant completed and signed a Questionnaire for National Security Position (SF 86) or security clearance application (SCA). Government Exhibit (GE) 1. On June 15, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs).

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under the foreign influence guideline.

Applicant provided an undated response to the SOR. HE 3. On July 9, 2016, Applicant requested a hearing. Transcript (Tr.) 15. On August 31, 2016, Department Counsel was ready to proceed. On April 17, 2017, the case was assigned to another administrative judge, and on September 12, 2017, the case was assigned to me. On May 22, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for October 12, 2017. HE 1. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered one exhibit; Applicant offered two exhibits; there were no objections; and all proffered exhibits were admitted into evidence. Tr. 18-23; GE 1; Applicant Exhibit (AE) A-B. On October 20, 2017, DOHA received a copy of the transcript of the hearing. On November 14, 2017, Applicant provided three exhibits, which was admitted without objection. AE C-AE E. The record closed on November 15, 2017. Tr. 51, 55-56.

While this case was pending a decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which are applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective on June 8, 2017. I have evaluated Applicant's security clearance eligibility under the new AGs.¹

Procedural Ruling

Department Counsel offered a summary for administrative notice concerning foreign influence security concerns raised by Applicant's connections to Nigeria with seven attachments. Tr. 18-19; HE 4; I-VII. Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); 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) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to 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). Applicant objected to me taking administrative notice of the proffered documents because of lack of relevance. Tr. 19-21. Her objection is overruled, and Department Counsel's request for administrative notice is granted. Tr. 21. Applicant provided information about Nigeria after the hearing; there was no objection; and I have briefly summarized Applicant's submitted information in the first three paragraphs of the Nigeria section, *infra*. AE C-AE D. The remainder of the "Nigeria" section is quoted from Department Counsel's administrative notice request (bullet symbols and internal footnotes are omitted).

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

Findings of Fact²

The SOR alleges: Applicant's parents are dual citizens of the United States and Nigeria (§ 1.a); her sister is a citizen and resident of Nigeria, and she is employed by an entity of the Nigerian Government (§ 1.b); and her sister, parents-in-law, and two siblings-in-law are citizens and residents of Nigeria (§ 1.c). HE 2. Applicant admitted the SOR allegations in her response to the SOR. HE 3. She also provided mitigating information. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 35-year-old director of professional services for a government contractor who has employed her for two years. Tr. 7, 9; GE 1. Applicant was born in the United States. Tr. 49. When she was an infant, her parents, who were Nigerian citizens, moved to Nigeria. Tr. 25. In 2000, she graduated from high school in Nigeria. Tr. 7, 25. In 2002, she returned to the United States. Tr. 25. In 2005, she received a bachelor's degree in the United States, and in 2006, she received a master's degree in the United States in management and information systems. Tr. 8-9. She has not served in the U.S. military or the military of any other country. Tr. 9.

In 2006, Applicant married, and her four children are ages 10 months, 6, 8, and 14. Tr. 9. Her spouse was born in Nigeria and naturalized as a U.S. citizen. GE 1. Her Nigerian passport is expired, and she has a U.S. passport. Tr. 24. She has never voted in a Nigerian election. Tr. 24. Applicant's spouse and children are U.S. citizens. Tr. 54. Applicant and her spouse vote in U.S. elections. Tr. 55.

Applicant's parents were born in Nigeria. GE 1. In 2012 or 2013, they became U.S. citizens. Tr. 27; GE 1. Applicant's mother died in the summer of 2017, and her father is currently staying in Nigeria. Tr. 26. He intends to return to the United States. Tr. 27. Her brother who is a citizen of Nigeria is a permanent resident of the United Kingdom, where he has lived since 2005 or 2006. Tr. 28-29. Her sister has lived in the United Kingdom since 2004, and she is a citizen of the United Kingdom. Tr. 31.

Applicant has two sisters who are citizens and residents of Nigeria. Tr. 32, 36. One sister is an accountant for a Nigerian Government agency that facilitates tourism and encourages public debate, patriotism, and public knowledge about Nigeria. Tr. 32-33, 50; AE C. She is 10 years older than Applicant, and her husband is deceased. Tr. 36, 38. Applicant is not familiar with her duties and does not know whether she is a supervisor. Tr. 34. Applicant communicates with her older sister about twice a month. Tr. 35. They do not discuss Applicant's work. Tr. 35. Applicant communicates with her younger sister on a weekly basis. Tr. 37. Her younger sister does not have ties to the Nigerian Government. Tr. 38. Her younger sister's husband works for a hotel chain based in the United States. Tr. 38. Applicant does not send her sisters money. Tr. 35, 38.

²The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and her family's privacy. The cited sources contain more specific information.

Applicant visited Nigeria three times in the past 15 years: in August 2017, for her mother's funeral; in 2010; and in 2005. Tr. 37, 45. For each visit, she stayed 10 to 21 days. Tr. 47.

Applicant's parents-in-law immigrated to the United States in 2014, and they are U.S. permanent residents. Tr. 39; AE B. Applicant's sister-in-law and brother-in-law are citizens and residents of Nigeria. Tr. 43. Applicant has contact with her sister-in-law and brother-in-law about every six weeks. Tr. 43-44. Her in-laws do not and did not work for the Nigerian Government, and they do not have ties to the Nigerian Government. Tr. 42-44. She has not sent any of her in-laws funds. Tr. 39-44. The only times she met any of her in-laws were during her Nigerian visits in 2010 and August 2017. Tr. 45.

Applicant's spouse works for the U.S. Government in information technology. Tr. 53. Applicant and her spouse's annual salary totals \$250,000. Tr. 53. Their total U.S. net worth is about \$700,000, and they do not have any financial interests in Nigeria. Tr. 54. In November 2017, Applicant formally renounced her Nigerian citizenship. Tr. 48; AE E.

Nigeria

Nigeria is a federal republic that gained independence from Britain in 1960. Nigeria is the most populous country in Africa with a population in 2017 of more than 180 million. The country's area is about the same as California, Nevada, and Arizona combined. The United States is Nigeria's largest trading partner. Oil and gas exports from Nigeria are most of Nigeria's export income. The United States is the largest foreign investor in Nigeria, and U.S. investment is mostly in mining and petroleum.

Since the restoration of basic democracy in Nigeria in 1999, the bilateral relationship between the United States and Nigeria has continued to improve, and cooperation on many important foreign policy goals, such as regional peacekeeping, has been excellent. On April 6, 2010, Secretary of State Hillary Clinton and Nigerian Secretary to the Government of the Federation Yayale Ahmed inaugurated the U.S.-Nigeria Binational Commission, a formalized commitment to hold bilateral talks on four key areas: good governance, transparency, and integrity; energy and investment; Niger Delta and regional security; and agriculture and food security. During her first official trip to Africa, Secretary Clinton visited Nigeria on August 12, 2009. Nigeria's President Jonathan met with President Barack Obama at the White House on June 8, 2011.

Nigeria has three tiers of government. Nigeria utilizes a Presidential System of Government with a National Assembly with two chambers (similar to the U.S. Congress). Each of the 36 states in Nigeria has a State Assembly. There are also 774 local governments. An estimated one million Nigerians and Nigerian Americans live, study, and work in the United States, while over 25,000 Americans live and work in Nigeria.

Nigeria has suffered from ethnic, regional, and religious violence. Reports of serious human rights abuses have been ongoing. Abuses have been committed by the

militant terrorist group, Boko Haram, and Nigerian security forces. Civilian authorities have not always maintained effective control over security services.

Nigerian security forces, particularly the police, have been accused of serious human rights abuses. The Government lacked effective mechanisms and sufficient political will to investigate and punish security force abuse and corruption. The police and military remained susceptible to corruption, committed human rights abuses, and operated with widespread impunity in the apprehension, illegal detention, torture, and extrajudicial execution of suspects. The government took few steps to investigate or prosecute officials who committed abuses and impunity remained widespread at all levels of government.

Non-governmental organizations and international human rights groups have accused the security services of illegal detention, inhuman treatment and torture of demonstrators, criminal suspects, detainees, and prisoners. Other serious human rights problems included vigilante killings; prolonged pretrial detention, often in poor conditions and with limited independent oversight; civilian detentions in military facilities, often based on flimsy evidence; denial of fair public trial; executive influence on the judiciary; infringement on citizens' privacy rights; restrictions on freedoms of speech, press, assembly, and movement; official corruption; violence against women and children, including female genital mutilation/cutting; sexual exploitation of children; trafficking in persons; early and forced marriages; discrimination based on sexual orientation and gender identity; discrimination based on ethnicity, regional origin, religion, and disability; forced and bonded labor; and child labor.

The most serious human rights problems during 2015 and 2016 were those committed by Boko Haram, which each year conducted numerous attacks on government and civilian targets throughout the country, resulting in thousands of deaths and injuries, widespread destruction, forced internal displacement of an estimated 1.8 million, and external displacement of almost 200,000 refugees to neighboring countries. Boko Haram is a Nigeria-based militant group with links to al-Qa'ida in the Islamic Maghreb (AQIM) that is responsible for thousands of deaths in northeast and central Nigeria over the last several years including targeted killings of civilians. Also operating in Nigeria, Ansaru is a Boko Haram splinter faction that earlier in 2013 kidnapped and executed seven international construction workers. While northeastern Nigeria is the epicenter of Boko Haram activities, the group has taken responsibility for attacks in Jos, the Federal Capital Territory, and Lagos. Boko Haram has targeted churches, schools, mosques, government installations, educational institutions, and entertainment venues in Adamawa, Bauchi, Borno, Gombe, Kaduna, Kano, Plateau, Taraba, the Federal Capital Territory, and Yobe states. Hundreds of thousands of Nigerians have been displaced as a result of violence in the north. Islamic State West Africa, which is now a distinct group from Boko Haram, is present in Nigeria, and may seek to attack locations frequented by westerners including major population centers.

In its response to Boko Haram, and at times to crime in general, security services perpetrated extrajudicial killings and engaged in torture, rape, arbitrary detention, mistreatment of detainees, and destruction of property. A vigilante group known as the

Civilian Joint Task Force (C-JFT) continued to recruit children. The government took few steps to investigate or prosecute officials who committed violations, whether in the security forces or elsewhere in the government. Authorities did not investigate or punish the majority of police or military abuse.

Kidnappings remain a security concern throughout the country. Kidnappings in recent years have resulted in the deaths of foreign nationals, including several killed by their captors during military-led raids/rescue operations. Criminal groups continued to abduct civilians, often to collect ransom payments. Prominent and wealthy figures were often targets of abductions. Abductions by Boko Haram continued.

Security forces personnel have arbitrarily arrested numerous persons. Prisoners and detainees were treated improperly, and were frequently extorted by guards and prison officials. Prison officials, police, and other security force personnel often denied inmates food and unethical treatment to punish them or extort money. Only prisoners with money or support from their families had sufficient food.

In March 2015, Abubakar Shekau, the leader of Boko Haram, pledged his allegiance to ISIS, rebranding the group as the Islamic State in West Africa.” “Boko Haram and ISIS-West Africa continued to carry out killings, bombings, and attacks on civilian and military targets in northern Nigeria, resulting in thousands of deaths, injuries, and significant destruction of property in 2016.” “The Nigerian government actively cooperated with the United States and other international partners to prevent further acts of terrorism in Nigeria against U.S. citizens, citizens of third countries, and Nigerian citizens. Nigerian law enforcement agencies cooperated with the U.S. FBI to assist with counterterrorism investigations, including disruptions, information sharing, and interviews.”

The Nigerian government expected to confront a wide range of challenges in 2016, many of which are deeply rooted and have no “quick fixes.” Tasks include reviving a struggling economy - Africa’s largest - diversifying sources of government revenue beyond oil, reining in corruption, forming parastatal organizations, and developing the power, agriculture, and transportation sectors. Nigeria will continue to face internal threats from Boko Haram. Despite losing territory in 2015, Boko Haram will probably remain a threat to Nigeria and will continue its terror campaign within the country and in neighboring Cameroon, Niger and Chad.

The Department of State warns U.S. citizens of the risks of travel to Nigeria and recommends that U.S. citizens avoid all but essential travel to Adamawa, Bauchi, Borno, Gombe, Kano, and Yobe states because the security situation in northeast Nigeria remains fluid and unpredictable. There are significant risks associated with travel in Nigeria, including terrorist attacks, kidnappings, crime, and communal or political violence.

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.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. 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.” See Exec. Or. 10865 § 7. 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 about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it

is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information; and
- (e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant has frequent contacts³ with her relatives, including in-laws, who are citizens and residents of Nigeria. Applicant did not establish that her husband did not

³ The Appeal Board has concluded that contact every two months or more frequently constitutes “frequent contact” under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). See also ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant’s siblings once every four or five months not casual and infrequent).

have frequent contacts with his relatives in Nigeria. Their frequent contacts are a demonstration of their care and concern for relatives living in Nigeria. A Nigerian Government entity employs Applicant's sister.

The mere possession of close family ties with one or more family members living in a foreign country 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 potentially 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).

Applicant lives with and is close to her spouse. Her spouse has relatives living in Nigeria. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). "[A]s a matter of common sense and human experience, there is [also] a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(e). Indirect influence from a spouse's relatives living in Nigeria could result in a security concern. See ISCR Case No. 09-05812 at 2 (App. Bd. Dec. 1, 2011) (finding "presence in India of close family members, viewed in light of that country's troubles with terrorism and its human rights abuses, and his sharing living quarters with a person (his spouse) having foreign family contacts, establish the 'heightened risk'" in AG ¶¶ 7(b) and 7(e)).

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 or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, the government ignores the rule of law including widely accepted civil liberties, a family member is associated with or dependent upon the government, the government is engaged in a counterinsurgency, terrorists cause a substantial amount of death or property damage, or the country is known to conduct intelligence collection operations against the United States. The relationship of Nigeria with the United States, places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that her relationships with her family members living in Nigeria do not pose a security risk. Applicant should not be placed into a position where she might be forced to choose between loyalty to the United States and a desire to assist relatives living in Nigeria.

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, friendly nations can have profound disagreements with the United States

over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from Nigeria seek or have sought classified or economic information from or through Applicant or her family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and Nigeria has a serious problem with terrorism. Applicant's relationships with relatives living in Nigeria create a potential conflict of interest because terrorists could place pressure on her family living in Nigeria in an effort to cause Applicant to compromise classified information. These relationships create "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Department Counsel produced substantial evidence of Applicant's contacts with family in Nigeria and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(e) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists five conditions that could mitigate foreign influence security concerns including:

- (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;
- (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;
- (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;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee; and
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(b) applies. Applicant has frequent contact with her relatives, who are citizens and residents of Nigeria. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant was born in the United States, and she returned to the United States from Nigeria after completion of high school in Nigeria. Her spouse and children are U.S. citizens. Her parents-in-law are U.S. permanent residents. Her father is a U.S. citizen.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by her relationships with relatives who are citizens and residents of Nigeria. Like every other resident of Nigeria, they are at risk from terrorists.

In sum, Applicant's connections to her relatives living in Nigeria are less significant than her connections to the United States. Her employment in support of the U.S. Government, family living in the United States, and U.S. citizenship are important factors weighing towards mitigation of security concerns. She has no financial connections to Nigeria. She only has two visits to Nigeria in the previous 10 years. Her connections to the United States taken together are sufficient to fully overcome and mitigate the foreign influence security concerns under Guideline B.

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 AG ¶ 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 AG ¶ 2(c), “[t]he 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. My comments under Guideline B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

A Guideline B decision concerning Nigeria must take into consideration the geopolitical situation in Nigeria, as well as the dangers existing in Nigeria.⁴ While there is no evidence Nigeria is a collector of U.S. intelligence and sensitive economic information, Nigeria has very serious economic, military, political, judicial/legal and social problems. Nigeria and the United States are closely related in trade and diplomacy. Nigeria is the most populous country in Africa and about one million Nigerians live in the United States. The United States is Nigeria’s largest trading partner.

Applicant was born in United States. When she was an infant, her family went to Nigeria, where her parents were born. Applicant attended grammar school and high school in Nigeria. Applicant’s sister-in-law, brother-in-law, and two sisters are citizens and residents of Nigeria. Applicant’s father is a dual citizen of the United States and Nigeria, and he is currently staying in Nigeria. An entity of the Nigerian Government employs Applicant’s sister. Her sister is an accountant, and her sister is not part of the military or diplomatic parts of the Nigerian Government. Applicant frequently communicates with her relatives living in Nigeria, and these communications are a manifestation of her affection for them.

After graduating from high school, Applicant returned to the United States; she earned bachelor’s and master’s degrees in the United States; and she has been employed in the United States. In November 2017, Applicant renounced her Nigerian citizenship. Her spouse and four children are U.S. citizens, and they all reside in the United States. Applicant and her spouse’s annual salary totals \$250,000. Their total U.S. net worth is about \$700,000, and they do not have any financial interests in Nigeria.

The possibility of attempted exploitation of Applicant through her family in Nigeria is low. Applicant’s strong connections to the United States and especially to her U.S. family, community and employment establish “deep and longstanding relationships and loyalties in the U.S., [that she] can be expected to resolve any conflict of interest in favor of the U.S. interest.”

⁴ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

After weighing the evidence of her connections to Nigeria and to the United States, and all the facts in this decision, I conclude Applicant has carried her burden of mitigating the foreign influence security concerns.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Foreign influence security concerns are mitigated.

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 B: FOR APPLICANT

Subparagraphs 1.a through 1.c: 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 or reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Mark Harvey
Administrative Judge