



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



In the matter of:)
)
) ISCR Case No. 16-01870
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Catie Young, Esq.

January 31, 2018

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the concerns related to foreign influence and foreign preference raised by his family in Nigeria and his 2013 travel to Nigeria using his Nigerian passport. He has renounced his Nigerian citizenship and has demonstrated longstanding ties to the United States. He can be expected to resolve any conflict of interest in favor of the United States. National security eligibility for access to classified information is granted.

Statement of the Case

On August 17, 2016, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines B and C.¹ The SOR further informed Applicant that, based on information available to the government, DoD

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on September 29, 2016, and requested a hearing before an administrative judge. (Answer.) The case was assigned to another administrative judge on May 9, 2017 and transferred to me on July 5, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 8, 2017, scheduling the hearing for September 28, 2017. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 2, which were admitted without objections, and Hearing Exhibit (HE) I for Administrative Notice. Applicant testified on his own behalf and presented 12 documents, which I marked Applicant's Exhibits (AE) A through L. The record was left open until October 30, 2017, for receipt of additional documentation. On October 17, 2017, Applicant presented HE II for Administrative Notice.² Department counsel had no objections to HE II, and it was admitted. DOHA received the transcript of the hearing (Tr.) on October 13, 2017.

Procedural Rulings

1. At the hearing, the Government requested I take administrative notice of certain facts relating to Nigeria. Department Counsel provided a 7-page summary of the facts, supported by 7 Government documents pertaining to Nigeria, identified as HE I. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

2. At hearing, the Government amended the SOR to withdraw allegation SOR ¶ 2.a.1. Applicant had no objection to this amendment, and it was withdrawn. (Tr. 9.)

Findings of Fact

Applicant admitted to the allegations in SOR ¶¶ 1.a, 1.b, and 2.a.2. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 40-year-old employee of a defense contractor. He has been employed with the defense contractor since June 2016. He is married to his second wife, and has two children, ages one and three. Both of his children are solely U.S. citizens and have never traveled to Nigeria. (Tr. 24-25, 51.)

Applicant was born in Nigeria. He grew up in Nigeria. He earned a bachelor's of science degree in 2003 from a Nigerian university. He immigrated to the United States in 2007, after he married his first wife, who was a U.S. citizen. Their marriage ended in divorce in February 2012. (GE 1; GE 2; AE I; Tr. 17, 20, 24.) He became a naturalized U.S. citizen in November 2012. He earned a master's degree in 2013 from a U.S. university. (GE 1; AE C; AE I; AE K; Tr. 19, 40.)

² Due to a transmission error, HE II was not received until January 29, 2018.

Applicant traveled to Nigeria in February 2013, May 2013, and October 2013, in order to arrange for health care for his aging parents. He intended those trips to be his last travel to Nigeria, other than to potentially return for the future funerals of his parents. (Tr. 54-55.) He used his Nigerian passport on those trips. He explained that he was a new U.S. citizen and used his new U.S. passport exactly the same way he used the U.S. green card, to enter the United States. He did not know he should use the U.S. passport to leave the United States and enter Nigeria too. He has since relinquished his Nigerian passport and has met with his Facility Security Officer (FSO), to educate himself about all travel requirements. (AE B; Tr. 47, 54, 58-62.) He has “renounced [his] citizenship of Nigeria.” (AE A; Tr. 48, 63-64.) He is registered to vote in the United States, and voted in an election for the first time in his life in 2015. (AE K; AE C; Tr. 49.)

Applicant’s father and mother are citizens and residents of Nigeria. They live in southwestern Nigeria. His father is 79 years old and retired. He used to work as a teacher in a missionary school. His mother is 73 years old and in failing health. She is retired, but used to work as a nurse in the same mission that employed Applicant’s father. Applicant calls his parents weekly on the weekend to check on their health. He last saw them in 2013. His parents are not aware of what Applicant does for a living. They have never been affiliated with the Nigerian government. Applicant sends them \$120 to \$150 each month to help them with bills and expenses. They receive no government pensions, or aid. (AE K; Tr. 26-34, 70.)

Applicant’s mother-in-law is also a citizen and resident of southwestern Nigeria. She is 65 years old. She is cared for by Applicant’s sister-in-law, who is also a citizen and resident in Nigeria. They both work as traders, selling trinkets in front of their home. Applicant and his wife call his mother-in-law weekly to check on her welfare. His father-in-law is deceased. They do not know what Applicant does for a living. Applicant sends small amounts of money to his mother-in-law on holidays. She received no government benefits or support. (Tr. 33-39, 43, 70-71.)

Applicant testified that his parents and mother-in-law are about 800 miles away from the areas affected by Boko Haram insurgents. (Tr. 65.) He indicated it is a peaceful area populated largely by Christians. (Tr. 65.) Applicant does not fear for their safety. (Tr. 66.)

Applicant’s wife is a citizen of Nigeria, residing with Applicant in the United States. She immigrated to the United States in 2013. She has submitted her application for naturalization and is awaiting testing. She has no plans to return to Nigeria. She has developed deep roots in her community, spending her free time volunteering at their church. (AE L; Tr. 40-44.)

Applicant and his wife have invested in a home in the United States. He also has retirement savings in the United States. (AE F; Tr. 45-46.) He has no financial interests in Nigeria. (Tr. 50.)

Applicant presented multiple character reference letters from neighbors, friends, and colleagues. Each reflects that Applicant has a reputation for honesty. He is

respectful of privacy, rules and restrictions. He is known as a valued team player at work and considered a tremendous asset for his organization. (AE G.) He has successfully achieved numerous professional certifications. (AE H.)

Nigeria

Nigeria is Africa's most populous country. In 1999 it made a transition from military to civilian rule, and has had improving relations with the United States since that time. (CRS Report for Congress, Nigeria, HE I, at enclosure I; HE II.) It is an important trade partner with the United States. However, while Nigeria is a country of significant promise, it also faces serious social, economic, and security challenges. Corruption in Nigeria is widespread. Human rights abuses are pervasive. A militant sect known as Boko Haram has conducted numerous attacks on government and civilian targets throughout the country resulting in thousands of deaths. Other serious rights problems include vigilante killings and official corruption. There are significant risks associated with travel in Nigeria including terrorist attacks, kidnappings, crime, and political violence. The U.S. State Department warns U.S. citizens to avoid travel to northeast Nigeria. (HE I; HE II.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 decision.

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

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

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 several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

(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;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to

protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; 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.

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. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, that factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant has ongoing and commendable familial connections with his parents and mother-in-law, who are citizens of and residents in Nigeria. His wife is also a citizen of Nigeria. While his parents and mother-in-law do not live in northeastern Nigeria, there is still a potential heightened risk associated with these family members in Nigeria relating to the corruption and human rights abuses pervasive there. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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; 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.

Applicant's parents and mother-in-law in Nigeria are elderly. They receive no financial support from the Nigerian government nor do they have any other government affiliations. They do not know how applicant is employed or other details about his work. It is unlikely that Applicant's relationship with them or his wife would cause him to 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. They do not live in northeastern Nigeria, where the risks of terrorism are high. Further, Applicant expressed deep longstanding ties to his chosen country, the United States. He has all of

his assets in the United States and does not plan to return to Nigeria, except for his parent' funerals. He and his wife are active in their church community and are proud to be raising two U.S. citizen children. Applicant can be expected to resolve any conflict of interest in favor of the U.S. interest. The above conditions fully apply.

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. The following is potentially applicable in this case:

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

Applicant was a dual citizen of the United States and Nigeria. He exercised his Nigerian citizenship when he used his Nigerian passport to exit the United States and enter Nigeria in February 2013, May 2013, and October 2013, despite that fact that he was a United States citizen at that time and had a U.S. passport. The evidence is sufficient to raise the above disqualifying condition.

Conditions that could mitigate foreign preference security concerns are described under AG ¶ 11. One is potentially applicable:

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

Nigeria has had improving relations with the United States since 1999. However, the insurgent threat from Boko Haram and the widespread corruption in Nigeria represent a security risk. In mitigation of that risk, Applicant has petitioned Nigeria and formally renounced his Nigerian citizenship. He no longer possesses a Nigerian passport. Further, his use of the Nigerian passport occurred before he worked in the defense industry. Once he learned of the Government's restrictions on the use of a foreign passport, he met with his FSO to become fully educated on security requirements. AG ¶ 11(c) provides mitigation with respect to this guideline.

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 relevant 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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant performs well at his job and is respected by those that know him. He was born in Nigeria, and he is an American by choice. He has been residing in the United States for the past ten years. His closest familial ties are with wife and children, all of whom reside in the United States. His wife seeks to become a naturalized U.S. citizen. His remaining contacts in Nigeria are frequent but are routine and represent little risk. He can be expected to resolve any conflict of interest in favor of the United States due to his longstanding ties here.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence and Foreign Preference security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

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

Conclusion

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

Jennifer Goldstein
Administrative Judge