



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



In the matter of:)
)
) ISCR Case No. 16-01863
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

02/07/2018

Decision

TUIDER, Robert, Administrative Judge:

The statement of reasons (SOR) alleges foreign influence and foreign preference security concerns relating to Applicant's possession and use of a Nigerian passport and connections to his family and acquaintances living in Nigeria. The foreign preference security concerns were withdrawn. The foreign influence security concerns are mitigated because of his strong connections to the United States. Eligibility for access to classified information is granted.

Statement of the Case

On February 18, 2015, Applicant completed and signed a Questionnaire for National Security Position (SF-86). On August 18, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a 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 Guidelines C (foreign preference) and B (foreign influence).

On September 20, 2016, Applicant provided a response to the SOR and requested a hearing. On November 2, 2016, Department Counsel was ready to proceed. On March 22, 2017, the case was assigned to me. On May 19, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 14, 2017. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered six exhibits; Applicant offered four exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Transcript (Tr.) 14-17; GE 1-6; Applicant Exhibit (AE) A-D) On June 22, 2017, DOHA received a copy of the transcript of the hearing. On July 24, 2017, Applicant provided corrections to the transcript; there were no objections; and Applicant's corrections are approved. (AE E)

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. 15-19; GE 5; GE 6; 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 provided information about Nigeria; there was no objection; and I have briefly summarized Applicant's submitted information in the first paragraph of the Nigeria section, *infra*. AE C. 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.

SOR ¶ 1 alleges and Applicant admitted: that Applicant was naturalized as a U.S. citizen in December 2006, and in September 2010, he renewed his Nigerian passport. (¶ 1.a); and in September 2010, he used his Nigerian passport to travel to Nigeria in lieu of his U.S. passport (¶ 1.b). Applicant did not object to Department Counsel's motion to withdraw the allegations in SOR ¶ 1. (Tr. 8-9) I approved the motion, and the Guideline C allegations are withdrawn. (Tr. 9) The foreign preference security concerns will not be further discussed in this decision.

Findings of Fact²

SOR ¶ 2 alleges the following relatives are citizens and residents of Nigeria: his mother (¶ 2.a); his sister (¶ 2.b); his uncle (¶ 2.c); and his extended family members (¶ 2.e). Applicant maintains contacts with high-level Nigerian Government officials (¶ 2.d). His uncle is an officer in the Nigerian military and a tribal leader (¶ 2.c). Applicant admitted the SOR allegations in SOR ¶¶ 2.a, 2.b, 2.c (in part), and 2.e in his response to the SOR. He denied that his uncle was an officer in the Nigerian military and that he has contacts with high-level Nigerian Government officials. He also provided mitigating information. His 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 48-year-old engineer employed by a government contractor since July 2010. (Tr. 36-37; GE 2) In 1990, Applicant received a bachelor's degree in mechanical engineering in Nigeria. (Tr. 38-39) In 1994, he received a master's degree in mechanical engineering in the United States. (Tr. 39) In 1997, he received a Ph.D. in mechanical engineering in the United States. (Tr. 40) He has not served in the armed forces of Nigeria or the United States. (Tr. 42; GE 3)

In 1992, Applicant emigrated from Nigeria to the United States with a student visa. (Tr. 18, 38; GE 2) In 2006, he became a U.S. citizen. (Tr. 18, 42; GE 2) In 1999, he married, and he has a 12-year-old child. (Tr. 41) His spouse was born in the United States, and her primary employment is as a homemaker. (Tr. 87-89)

Applicant's mother, uncle, and half-sister are citizens and residents of Nigeria. (Tr. 19, 24) He is estranged from his mother and half-sister. (Tr. 20) He said sometimes he has had frequent contacts with his mother and other times he may go for months without communicating with her. (Tr. 58-59) His contacts with his half-sister were reduced after Applicant's parents divorced. (GE 3) He is not aware of his half sister's current name, marital status, profession, or address. (Tr. 20; SOR response) He was unsure about whether he would receive an inheritance when his mother passes away. (Tr. 59) His mother is retired. (GE 2) He said his mother lived in a very dangerous area of Nigeria because it has a serious problem with crime. (Tr. 59; GE 2) However, she moved, and he is not aware of whether this area is safe. (Tr. 60) After Applicant's father died, his mother remarried. (Tr. 60) Applicant's father never served in the Nigerian military. (Tr. 55) He said he did not know whether his mother was still married, and if

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

she is still married, where her spouse resides. (Tr. 60) He suggested that her spouse could be a citizen and resident of the United States. (Tr. 60)

Applicant's uncle is a tribal leader. (Tr. 24) His uncle's power is very limited, and he does not receive a salary for his leadership role in the tribe. (Tr. 25) In 1985 or 1986, his uncle retired from the Army. (Tr. 25-26, 28, 46) His uncle had a close high-ranking friend who was removed from his high-level military office, and at that time, Applicant's uncle retired from the Army. (Tr. 45-46) His uncle has separated himself from his former Army associates. (Tr. 26) He became a tribal leader around 1996. (Tr. 44) His uncle has access to high-level Nigerian officials. (Tr. 44) His uncle receives protection from Nigerian police and security guards. (Tr. 44-45) Sometimes his mother and uncle visit the United States and do not visit Applicant. (Tr. 27; AE D)

Besides his uncle, Applicant had limited contacts with another retired high-ranking Army officer and tribal leader. (Tr. 28) His only in-person contact with this tribal leader was two years ago at the funeral of Applicant's father in 2015. (Tr. 29, 53, 55, 61) He communicated with the tribal leader on the telephone several times over the past two years. (Tr. 29) He has not communicated with the tribal leader for about one year. (Tr. 29, 54)

Applicant's cousin has connections to the Nigerian Government; however, Applicant's most recent contact with his cousin was seven years ago. (Tr. 44-45) In 2016, Applicant had contact with a Nigerian legislator who is also Applicant's spouse's distant relative. (Tr. 52) He has about \$100 in a Nigerian bank account. (Tr. 83)

Applicant's mother-in-law is a U.S. citizen, and his father-in-law is deceased. (Tr. 51, 64) Two of Applicant's spouse's sisters reside in the United States. (Tr. 52, 63) Applicant's brother resides in the United States, and Applicant's most recent contact with his brother was in 2015. (Tr. 58, 61) His brother who resides in the United States may be a Canadian citizen. (Tr. 62)

Applicant traveled to Nigeria in 2005, 2010, 2015, and 2016. (Tr. 56-57) His stays in Nigeria have been for about two weeks. (Tr. 57) He has a half brother who was born in the United States and may reside in Nigeria. (Tr. 62) Applicant has several cousins, some in-laws of his mother-in-law, and two friends living in Nigeria. (Tr. 65-74) He has not had any contact with some of them since 2015 at his father's funeral, no contact with others for about two years, or contact with some of them once or twice in a year. (Tr. 66-74) He is not aware of their ages, current addresses, or employers. (Tr. 66-74; GE 3 at 6-8)

Applicant and his spouse own two homes in the United States. (Tr. 79-80) Their net worth in the United States is about \$550,000. (Tr. 86) His annual salary is about \$115,000. (Tr. 98) He votes in U.S. elections. (Tr. 81) He is involved in his U.S. church, a U.S. professional organization, and his U.S. community. (Tr. 82-83)

Applicant indicates the primary security concern in Nigeria is with Boko Haram, which focuses on attacking females with educations and people who wear trousers and

shirts. (Tr. 75-78) Boko Haram does not seek U.S. technology or conduct espionage against the United States. (Tr. 75) Boko Haram's attacks are primarily in Northern Nigeria. (Tr. 75) Applicant's family in Nigeria is located in Southern Nigeria. (Tr. 75)

Applicant presented information about various U.S. leaders in the Executive Branch with foreign connections from former Secretary of State Henry Kissinger to Presidents Barack Obama and Donald Trump to show their important contributions to the United States and trustworthiness. (AE C) He also provided press releases from U.S. Homeland Security, which indicate at times there has been a high risk of terrorism in the United States. (AE C)

Character Evidence

Applicant's friend and work colleague has known him since 1995, and he believes Applicant is a diligent, honest, and loyal U.S. citizen. (Tr. 33-35; AE A at 1) A university professor has known Applicant since 1995, and he describes Applicant as having "good moral character" and being loyal to the United States. (AE A at 2) Their statements support approval of his access to classified information.

Nigeria

The United States and Nigeria have ongoing high-level meetings involving international affairs, trade, improvement of governance, democracy, economic growth, and counter terrorism. President Trump has met with the President of Nigeria to discuss these issues. The United States wishes to increase military sales to Nigeria. The United States and Nigeria have strong relationships in many areas, especially in trade.

The country has faced intermittent political turmoil and economic crises since independence. Political life has been scarred by conflict along ethnic, geographic, and religious lines, and corruption and misrule have undermined the authority and legitimacy of the state. Congress regularly monitors Nigerian political developments and has expressed concerns with corruption, human rights abuses, and environmental damage in the Delta, as well as with the threat of violent extremism in Nigeria.

Corruption in Nigeria is "massive, widespread, and pervasive," according to the U.S. State Department, and by many accounts, the country's development will be hampered until it can address the perception of impunity for corruption and fraud. Human Rights Watch suggests that Nigeria's political system rewards rather than punishes corruption, which has been fueled by oil revenues for decades.

The most serious human right problems during 2014 were those committed by the militant sect known by the name of Boko Haram, which 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 the flight of more than 100,000 refugees to neighboring countries. 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. The country also suffered from widespread societal violence, including ethnic, regional, and religious violence. Other serious human rights problems included vigilante killings and official corruption. The Civilian Joint Task Force (C-JTF) continued to recruit children and commit extrajudicial killings. 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.

Nigerian security forces, particularly the police, have been accused of serious human rights abuses. In 2007, a U.N. report indicated that torture is an intrinsic part of how law enforcement services operate within the country and called on the Nigerian Government to criminalize the practice. Nigerian officials have acknowledged some abuses; in 2010, the country's police minister called the situation "condemnable and unacceptable," but few security personnel have been prosecuted for abuses.

Boko Haram, a violent Nigerian Islamist movement, has grown increasingly active and deadly in its attacks against state and civilian targets in recent years. The group's April 2014 abduction of almost 300 schoolgirls has drawn international attention. Periodic attacks against foreign targets in the region and growing evidence of ties to Al Qaeda in the Islamic Maghreb, a regional terrorist network affiliated with Al Qaeda, have also raised the concern of U.S. policymakers. The State Department named several individuals linked to Boko Haram, including its leader, as Specially Designated Global Terrorists in 2012, and Boko Haram was designated as a Foreign Terrorist Organization by the U.S. State Department in November 2013. More than 4,000 people are estimated to have been killed in Boko-Haram related violence, making it one of the deadliest terrorist groups in the world. In 2014, Boko Haram carried out kidnappings, killings, bombings, and attacks on civilian and military targets in northern Nigeria, resulting in nearly 5,000 deaths, many injuries, tens of thousands of displaced civilians, and significant destruction of property. In May, the Nigerian government renewed a State of Emergency. Despite the increased military presence in the region, Boko Haram continued to attack schools and take over large and small towns.

* * *

Kidnappings remain a security concern throughout the country. Criminal elements throughout Nigeria orchestrate kidnappings for ransom; Islamic extremists, operating predominantly in the North, also have been known to conduct kidnappings. Criminals or militants have abducted foreign nationals, including U.S. citizens, from off-shore and land-based oil facilities, residential compounds, airports, and public roadways. In 2015, six U.S. citizens were kidnapped in separate incidents.

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 two 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; 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.

Applicant’s mother, half sister, uncle, and extended family members are citizens and residents of Nigeria. His contacts with all of these relatives, except for his mother, are minimal, infrequent, and not recent. Applicant’s contacts with his mother have varied from frequent³ to infrequent. Currently Applicant’s contacts with his mother are infrequent (two or less contacts in the past two years). He did not establish that his contacts with his mother would continue to be infrequent. He may reconcile with her at any time, and there is a strong presumption that he cares about his mother’s well being or welfare. The degree of contact with one’s relatives is a demonstration of the care and concern for one’s relatives; however, it is not the only measure of care and concern.

Applicant’s uncle is a former Army officer and tribal leader in Nigeria. He has very limited contacts with his uncle, and he has not communicated with his uncle for two

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).

years. Applicant also had contact with a former Nigerian official; however, his contacts were infrequent and are not recent.

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).

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 his relationship with his mother does not pose a security risk. Applicant should not be placed into a position where he 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 his mother, nevertheless, it is not prudent to rule out such a possibility in the future. 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 relationship with his mother creates a potential conflict of interest because terrorists could place pressure on his mother in an effort to cause Applicant to compromise classified information. His relationship with his mother creates "a heightened risk of foreign inducement, manipulation, pressure, or coercion" under AG ¶ 7. Department Counsel produced substantial evidence of Applicant's relationship with his mother in Nigeria and has raised the issue of potential foreign pressure or attempted exploitation.

AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six 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;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

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. At times in the past, Applicant had frequent contact with his mother, who is a citizen and resident of Nigeria. He may have frequent contacts with her in the future. There is a strong presumption that a person has care and concern for the welfare of their mother. Nigeria remains a dangerous place. A key factor in the AG ¶ 8(b) analysis is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” Applicant has resided in the United States for 25 years, and his wife and child are U.S. citizens. He and his spouse have relatives in the United States. The net worth of their U.S. property is about \$550,000 and his annual pay for his U.S. employment is about \$115,000.

Applicant’s relationship with and connections to the United States must be weighed against the potential conflict of interest created by his relationships with and connections to relatives who are citizens and residents of Nigeria. His mother, half sister, uncle, and extended family members are citizens and residents of Nigeria. Like every other resident of Nigeria, they are at risk from terrorists and criminals. Applicant is not close to his relatives in Nigeria, and currently, his contacts with them are infrequent. He is much closer to his family in the United States, and he has strong connections to them.

In sum, Applicant’s connections to his relatives living in Nigeria are less significant than his connections to the United States. His 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. He has minimal financial connections to Nigeria. He has only four visits to Nigeria in the previous 10 years. His 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. Crime and terrorism are particularly serious concerns. Nigeria and the United States are closely related in trade and diplomacy. The United States is assisting Nigeria in counter-terrorism endeavors.

Applicant was born in Nigeria, and he attended schools through the bachelor’s degree level in Nigeria. His mother, half sister, uncle, and extended family members are citizens and residents of Nigeria. His uncle is a former Army officer and tribal leader in Nigeria. He has very limited contacts with his uncle, and he has not communicated with his uncle in two years. Applicant is not aware of any relatives currently employed by the Nigerian Government. Applicant’s only significant relationship with anyone living in Nigeria is with his mother. His relationship with his mother is currently estranged, but could return to a close relationship.

Applicant immigrated to the United States from Nigeria in 1992, and he became a U.S. citizen in 2006. He received his master’s degree and Ph.D. in the United States. His spouse and child are U.S. citizens. His employment and investments are in the United States. His character witnesses’ descriptions support approval of his security clearance.

The possibility of attempted exploitation of Applicant through his family in Nigeria is low. Terrorists in Nigeria and the Nigerian Government do not have a history of seeking U.S. classified or sensitive information through the exploitation of Nigerian relatives. Applicant’s strong connections to the United States and especially to his U.S. family, community and employment establish “deep and longstanding relationships and loyalties in the U.S., [that he] can be expected to resolve any conflict of interest in favor of the U.S. interest.”

After weighing the evidence of his connections to Nigeria and to the United States, and all the facts in this decision, I conclude Applicant has carried his 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.

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).

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: WITHDRAWN

Subparagraphs 1.a and 1.b: Withdrawn

Paragraph 2, Guideline B: FOR APPLICANT

Subparagraphs 1.a through 1.e: 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.

Robert Tuidor
Administrative Judge