



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



In the matter of:)
)
) ISCR Case No. 16-03514
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: Ngozi Anidi, Esquire

02/20/2018

Decision

LYNCH, Noreen A., Administrative Judge:

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

On November 10, 2014, Applicant completed and signed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE 1) On December 29, 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline F, Financial Considerations, Guideline C, Foreign Preference and Guideline B, Foreign influence.¹ Applicant timely answered the SOR, requesting a hearing. DOHA

¹DoD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006. On 10 December 2016, the Director of National Intelligence (DNI) signed Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017. This decision is issued under the new AG, but I have examined the old AG to ensure that I would not reach a different result if I issued this decision under the old AG. I would not rule differently under either set of AG.

assigned the case to me on September 26, 2017. On October 19, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for January 12, 2018. Applicant's hearing was held as scheduled.² The Government introduced GX 1 through 6 into the record without objection. Applicant testified and presented Applicant Exhibits (AX A-I), but requested that the record remain open for additional documents. On January 23, 2018, DOHA received a copy of the transcript (Tr.). The record in this case closed February 2, 2017, as Applicant submitted additional information, which was entered into the record as AX J.

Findings of Fact

Applicant denied the SOR allegations under Guideline B and Guideline F. She is a 31-year-old mechanical engineer for a U.S. defense contractor. In 1996, she came to the United States with her parents when she was 9 years old. The family came from Nigeria for political asylum. (Tr. 17) She attended elementary and high school in the United States. She obtained her undergraduate degree in the Ukraine on a scholarship. In 2010, she obtained a graduate degree in astronautics engineering. She attended additional graduate courses in the United States from 2011 to 2012. She became a naturalized U. S. citizen in February 2013. (AX I) She is married to a man from Nigeria, who is a legal permanent resident of the United States and lives with Applicant, and they have two children who are U.S. citizens. She has been employed with her current employer since 2014. She has not previously held a clearance. (GX 1)

The SOR alleges, and GX 4-6 substantiate that Applicant has five student loans amounting to \$75,000 which are delinquent. It also alleges that her husband is a citizen and resident of the Ukraine, which she denies. She admits that her mother-in-law and father-in-law are citizens and residents of Nigeria.

Applicant disclosed her financial issues on her SCA. She listed her graduate student loans and explained that in 2013, she put them "on hold." She could not find a steady job after receiving her graduate degree for almost three years. She had been making payments on the various loans. She has submitted documentation that a student loan servicer is now handling the department of education student loans and the other student loans. Since she has consolidated the student loans she is making payments on the interest, but the actual payment is suspended until January 3, 2019. (AX J) The current payment plan is for Applicant to pay \$5 a month for ten months. The plan is an income-driven plan, which is based on your yearly income tax return. (Tr.43)

Applicant submitted a budget that reflects spending within her means and saving money. She earns \$58,000 a year and her husband is also employed full time. Applicant also submitted a payment history showing the last 12 months with respect to the student loans and the consolidation. (AX A, B, E and J)

²At the hearing, the Government through Department Counsel withdrew the Guideline C, Foreign Preference allegations. I have also taken administrative notice of United States (U.S.) Government documents on U.S. relations with Nigeria, as requested by Department Counsel.

Foreign Influence

Applicant was about 9 years of age when she moved to the United States in 1996 with her parents. Applicant's husband is a permanent legal resident and lives with her in the United States. (AX G) Her father and mother live in the United States as naturalized citizens. She has siblings in the United States. She has no other family in Nigeria. Applicant's mother-in-law and father-in-law recently received visas. (AX C, D, and E) They lived in the United States from July 2017 to November 2017. (Tr. 54) They are both retired and have no assets in Nigeria.

Applicant speaks about once a month to her in-laws by phone. They speak about the health of the family. They do not know about her request for a security clearance. They have no connections to the Nigerian government or the intelligence community.

Applicant owns a home in the United States. She has two children in the United States. She would never leave the United States. She is pursuing her professional dream to work in the field of aerospace engineering. She and her husband have their professional lives in the United States. Her credit reports show that she has had some financial difficulty but otherwise the majority of accounts are paid as agreed. She has no financial interest in Nigeria.

Administrative Notice

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

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

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

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

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline F (Financial Considerations) and Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.³

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Analysis

The Government established a case for disqualification under Guideline F⁴. Applicant has sufficiently mitigated the security concerns. She acknowledges that she had delinquent student loans that she could not pay immediately as she was unemployed. She has submitted documentation that confirms her current consolidation and payment plan for the student loans. (AX J)

Applicant meets some of the mitigating conditions for financial considerations. While her financial difficulties are recent, the circumstances which led to her financial situation are unlikely to recur.⁵ They were arguably due to circumstances beyond her control. She did not expect unemployment after obtaining her degree.⁶ Applicant submitted proof that she is current and has no other delinquent debts.⁷ She uses a budget and saves. Accordingly, I conclude the allegations under Guideline F for Applicant.

The Government also established a case for disqualification under Guideline B⁸, but Applicant mitigated the security concerns. Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.⁹ Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement,

⁴AG ¶18

⁵¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁶¶20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

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

⁸AG¶ 6.

⁹AG ¶ 6.

manipulation, pressure, or coercion.¹⁰ In addition, security concerns may be raised by 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.¹¹ Finally, security concerns may be raised by a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to a heightened risk of foreign influence or exploitation.¹²

Considering first the country involved, Nigeria, there is nothing to suggest that Applicant's in-laws would make Applicant or her husband likely targets for coercion, duress, or influence. The Government's evidence explains the methods used by intelligence to pursue U.S. information, and those methods pursue information directly through infiltration of Government agencies or exile groups. There is no indication Nigerian agents seek to influence ex-patriate citizens by pressuring their relatives in Nigeria.

Considering Applicant's circumstances, the Government produced sufficient evidence that there is a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's in-laws in Nigeria. Applicant's in-laws have no direct connection to the Nigerian government, and there is nothing in her connection to them to raise a concern over protecting classified information. However, Guideline B is not limited to countries hostile to the United States. Friendly nations have engaged in espionage against the United States. 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. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue.

As noted above, there is no evidence to reflect that Nigeria engages in economic or industrial espionage. There is however, substantial evidence of terrorist activities within certain areas of the country. The activities of Nigerian authorities as well as those insurgent and terrorist groups, the risks of kidnappings by gangs, and the danger of Boko Haram and other radicalized ISIL sympathizers in Nigeria are sufficient to establish as "heightened risk" - a risk that is greater than the normal risk inherent in having a family member living under a foreign government.

¹⁰AG ¶ 7(a).

¹¹AG ¶ 7(b).

¹²AG ¶ 7(e).

As to mitigation in this case, Applicant raises mitigating conditions¹³. Applicant's ties to the United States run deep. She owes no duty to any Nigerian entity, and her immediate family is in the United States. Her extended family connection is minimal. Further, she has lived in the United States and has been a U.S. citizen since 1996, and her commitment to U.S. interests is manifest. She has embraced the United States as her home in both the personal and professional arena. She has no financial assets in Nigeria or foreign business contacts. Her contacts with her in-laws are less than typical. They do not know about her security clearance. They have no connections to the Nigerian government or intelligence services. I have no questions or doubts as to Applicant's eligibility for a security clearance. Under these circumstances, I conclude that it is unlikely Applicant can be pressured based on her in-laws in Nigeria. Accordingly, I resolve Guideline B for Applicant.¹⁴

Formal Findings

Paragraph 1. Guideline B:	FOR APPLICANT
Subparagraphs a-b:	For Applicant
Paragraph 2. Guideline F:	FOR APPLICANT
Subparagraphs a-e:	For Applicant

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Noreen A. Lynch
Administrative Judge

¹³AG ¶¶ 8(a) and (b)

¹⁴ I have considered the factors under the whole-person at AG ¶ 2(d), including her number of years living in the United States and that her husband and children are in the United States, as well as her parents. Her in-laws have lived in the United States and have visas. Also, she has her professional career in the United States.