



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-15425
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Emilio Jaksetic, Esquire, Department Counsel  
For Applicant: Eric A. Eisen, Esquire

September 10, 2008

**Decision**

CREAN, Thomas M., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP) on December 22, 2006. On May 1, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns for Applicant under Guideline B, Foreign Influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on May 8, 2008. He answered the SOR in writing on May 19, 2008, admitting all of the factual allegations in the SOR with explanation. He requested a hearing before an administrative judge. Department counsel was prepared to proceed on June 16, 2008, and the case was assigned to another administrative judge on June 19, 2008. The case was reassigned to me on July 18, 2008. DOHA issued a notice of hearing on July 28, 2008, and I convened the

hearing as scheduled on August 28, 2008. The government offered two exhibits, marked Government Exhibits 1 and 2, which were received without objection. Applicant submitted seven exhibits, marked Applicant Exhibits A through G, which were received without objection. Applicant and one witness testified on his behalf. DOHA received the transcript of the hearing (Tr.) on September, 8, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Procedural and Evidentiary Rulings**

#### Request for Administrative Notice

Department Counsel submitted a formal request for administrative notice of certain facts relating to Nigeria. (Tr. 15-16) The request and the supporting documents were not admitted into evidence but were included in the record as Hearing Exhibit I. Applicant had no objection to the request for administrative notice and the attached documents. The facts administratively noticed are set out in the Findings of Fact.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted all the factual allegations in the SOR with explanation.

Applicant is 48 years old and has been employed as a test and commissioning engineer for a defense contractor since 2000. Applicant was born and raised in Nigeria. He attended the equivalent of high school and two years of advanced schooling in Nigeria. He came to the United States in 1985 to further his studies. He received an associate degree in physics from a United States university but was required to drop out of school in 1987 when his father in Nigeria passed away and he did not have the financial resources to continue. He worked for a number of years and then enrolled in another United States college in 1997, and received a Masters of Electrical Engineering degree in 1999. (Tr. 32-34)

Applicant arrived in the United States on a student visa. His visa was changed to a temporary visa when he had to leave school in 1987. He became a permanent resident in 1994 and received his United States citizenship in 1999. Shortly thereafter, he started working for the defense contractor. Since his arrival in the United States, Applicant has returned to Nigeria once in 1998 to visit his family and father's grave. He did not return to Nigeria when his father passed away in 1987. (Tr. 34-37; Government Exhibit 1, Security Clearance Application, E-QIP, dated February 14, 2007)

Applicant's wife was also born in Nigeria and came to the United States in 1994. They met in the United States and married in 2003. She is a permanent resident and plans to apply for United States citizenship as soon as she is eligible. They have one daughter, born in 2004, who is a United States citizen living in the United States. His

wife has three siblings who are citizens and residents of the United States. Her parents are citizens and residents of Nigeria. (Tr. 36-39) His wife has never returned to Nigeria to visit her parents. He does not believe his wife has sent money to her parents for their support. She does occasionally talk to them by telephone. (Tr. 57-58)

Applicant's father died in 1987. Applicant's mother was born in Nigeria and is a Nigerian citizen. She lived with Applicant and his wife in the United States from July 2004 until April 2007 when she returned to Nigeria to visit her children. She returned to the United States in January 2008 and now resides with one of her daughters, Applicant's sister, in the United States. She has a permanent resident card from the United States and intends to apply for United States citizenship when she is eligible. (Tr. 39-43; Applicant Exhibit A, Permanent Resident Card, dated April 8, 2007; Applicant Exhibit E, Security Clearance Application, dated December 22, 2006, at 19-25)

Applicant is the oldest of 12 children. He has two sisters who reside in the United States. One is a United State citizen and the other came to the United States on a lottery visa and is now a United States permanent resident. His other nine siblings reside in Nigeria and are Nigerian citizens. Applicant has little contact with his siblings in Nigeria. He does not know the employer or status of employment of his siblings. He believes they work for banks in Nigeria. One of his sisters may work for the Federal Reserve Bank in Nigeria.

Applicant does not consider his relationship with his siblings in Nigeria as close. Since the family lives in a village and communications are poor, they do not talk often. He does not have frequent contact with them and some he has not talked to in years. He may have contact with one of the siblings once a year and does ask about the other siblings. He does have an elderly aunt who he talks to more frequently and does ask about his siblings. (Tr. 43-44, 58-61; Government Exhibit 2, Answer to Interrogatories, dated December 3, 2007)

After their father died, the siblings considered what they should do for their mother. The house that their parents lived in was run down and the siblings decided to repair it. Applicant assisted this effort by providing funds to his siblings in Nigeria to assist in rebuilding and renovating the house. He does not have a property interest in the house. He does not own any other property or have any assets in Nigeria. (Tr. 29-31; Government Exhibit 2, Answers to Interrogatories, dated December 3, 2007, at 4)

Applicant has significant assets in the United States. He owns his own home. (Applicant Exhibit B, Mortgage payments, dated July 15, 2008). He has almost \$100,000 in assets in his employer's 401K savings plan. (Applicant Exhibit C, Statement, dated June 30, 2008).

Applicant is a valued employee of the defense contractor. His direct supervisor testified that he has known Applicant since he was hired in 2000. They were originally peers. In 2007, the witness was selected to head a project for the employer and he requested Applicant to be on his team. He is now Applicant's direct supervisor and

interacts with Applicant on a daily basis. Applicant is technically competent with a positive attitude and good moral character. Applicant has integrity and is trustworthy, and has protected sensitive client information. (Tr. 16-24; Applicant Exhibit D, Letter, dated, August 8, 2008)

The director of field services for Applicant's employer noted he has known Applicant for over eight years and has been both his colleague and supervisor. Applicant constantly demonstrated a high level of maturity, discretion, and exemplary performance of all of his duties. He receives high praise from both his colleagues and customers for his work ethic and moral standing. He has complete trust in Applicant's judgment and he is convinced Applicant will act in the best interest of the United States. (Applicant Exhibit D, Letter, dated August 5, 2008)

A senior engineer for Applicant's employer noted that he interviewed and hired Applicant for the employer. He has worked with Applicant since that time as both a co-worker and supervisor. Applicant has been a diligent, capable, and respected member of the company. He is mature and reliable and in his daily behavior shows loyalty to the United States. His activities with colleagues and clients have always been professional. (Applicant Exhibit D, Letter, dated August 8, 2008)

Nigeria is Africa's most populated country, with over a half of the population of all of Africa. Nigeria became independent from Great Britain in 1960, and has a constitutional parliamentary government. The country was ruled by the military until 1999 when there was a democratic election bringing back civilian rule. (Hearing Exhibit 1, Background Note: Nigeria, United States Department of State, dated April 2008) The Department of State continuously issues travel warnings because of chaos and lawlessness in Nigeria. Lawlessness in Nigeria leads to car bombings, kidnapping of foreigners, and violent crimes. Violence is particularly acute in the Niger Delta region. Religious tension between Muslims and Christians results in occasional acts of communal violence. Al-Qaida leadership has expressed interest in overthrowing the government. Road and air travel are dangerous. (Hearing Exhibit 1, Travel Warning Nigeria, dated October 30, 2007) The government's human rights record is poor and government officials commit serious human rights abuses. These include the abridgment of rights to change government, politically motivated killings by security forces, use of excessive force and torture, restriction on free speech and press, and other physical human rights abuses. (Hearing Exhibit 1, Country Reports on Human Rights Practices-2007, Nigeria, dated March 11, 2008) Nigeria has made progress in a fragile democracy. Nigeria is one of the United States' key strategic partners in Africa. It became a major player in Africa helping to negotiate settlements with other countries and plays a vital role in peacekeeping operations. Nigeria remains relatively stable although ethnic and religious clashes in part of the country are common. (Hearing Exhibit 1, CRS Report to Congress, Nigeria: Current Issues, January 30, 2008)

There have been improved and strong ties between Nigeria and the United State since June 1998. Bilateral relationships have continued to improve and there is good cooperation on many important foreign policy goals. The Nigerian government has lent

strong support to the United States government's counter-terrorism efforts since September 11, 2001. Nigeria has played a leading role in forging an anti-terrorism consensus among states in Sub-Saharan Africa. (Hearing Exhibit 1, Background Notes on Nigeria, dated April 2008, at 11-12) There is no evidence Nigeria has exploited its citizens to obtain classified information from United States citizens.

## **Policies**

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), 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 access to classified information will be resolved in favor of 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, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security 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**

There is a security concern because foreign contacts and interests may indicate 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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interests. 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 consideration 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 ¶ 6)

Applicant has nine siblings who are citizens and residents of Nigeria and he has contact with them through telephone calls. While he does not call any of his siblings exclusively, he does have contact with them as a group. The government has established that there is a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion in Nigeria because Nigeria is a country with a poor human rights record and much lawlessness in the country necessitating a continuous travel warning issued by the United States Government. There have been kidnappings and killings of foreigners in Nigeria, particularly oil industry workers. Applicant's siblings in Nigeria raise security concerns under Foreign Influence Disqualifying Conditions (FI DC) AG ¶ 79(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 FI DC AG ¶ 7(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). Each individual contact with his siblings by itself may not create a heightened risk of foreign influence, but the totality of the contacts may indicate a heightened risk of foreign influence. There is no security concern for his mother and sister who are citizens of Nigeria but live in the United States. There is no heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion since they live in the United States and are not located in Nigeria.

While not listed as a security concern in the SOR, I have considered that Applicant's father-in-law and mother-in-law are citizens and residents of Nigeria. Applicant lives with his wife in the United States. These factors raise FI DC AG ¶ 7(d) (sharing 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.)

I have considered Foreign Influence Mitigating Conditions AG ¶ 8(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 interest of the U.S.); AG ¶ 8(b) (there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and AG ¶ 8(c) (Contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation) and determine all apply to Applicant's circumstances.

Under the old adjudicative guidelines, a disqualifying condition based on foreign family members could not be mitigated unless an applicant could establish that the family members were not "in a position to be exploited." The Appeal Board consistently applied this mitigating condition narrowly, holding that its underlying premise was that an applicant should not be placed in a position where he is forced to make a choice between the interest of the family member and the interest of the United States. (See, ISCR Case No. 03-17620, App. Bd, Apr. 17, 2006; ISCR Case No. 03-24933, App. Bd. Jul. 28, 2005; ISCR Case No. 03-02382, App. Bd. Feb. 15, 2005; and ISCR Case No. 03-15205, App. Bd. Jan. 21, 2005). Thus, an administrative judge was not permitted to apply a balancing test to assess the extent of the security risk. Under the new guidelines, however, the potentially conflicting loyalties may be weighed to determine if an applicant can be expected to resolve any conflict in favor of the U.S. interest.

In determining if Applicant's family in Nigeria causes security concerns, I considered that Nigeria is an ally of the United States, has a defense agreement with the United States, and is one of the United States' substantial trading partners. While Nigeria has had a poor human rights record, I considered that Nigeria is improving its human rights position and its people enjoy basic freedoms. There are no indications the government of Nigeria or any group of terrorists or lawless entities in Nigeria have targeted United States citizens or relatives of United States citizens to provide economic or other sensitive information. While Nigeria is a country friendly to the United States, it could engage in espionage against United States interests. Friendly countries may have profound disagreements with the United States or have engaged in espionage against United States economic, scientific, or technical interest. A friendly relationship is not determinative, but it makes it less likely that a foreign government would attempt to exploit a United States citizen through relatives or associates in that country. Nigeria is not a hostile country, nor is its interests inimical to the United States. The United States and Nigeria are large democracies, enjoy good relations, and are trading partners. It is reasonable to consider that Nigeria would not take any action to jeopardize their friendly position with the United States because of their need for trade

and defense assistance from the United States. It would be considered an act unfriendly to the Nigerian interest with the United States to coerce its citizens with relatives in the United States to pressure their United States relatives to provide economic or other espionage information against the interest of the United States. While none of the considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion from his family members in Nigeria.

Applicant has raised Foreign Influence Mitigating Conditions (FI MC) ¶ 8(a). Applicant's contacts with his family members in Nigeria are minimal even though they are siblings. He established that his family members' living conditions, life style, and professions, show that it is unlikely Applicant will be placed in a position to choose between the interests of his family and the interests of the United States. Applicant established his family members in Nigeria are ordinary citizens leading normal lives. He has established that because of the positions and activities of his family in Nigeria and the minimal contact he has with them that it is unlikely Applicant will be placed in a position of being coerced or pressured to choose between these people and his interests in protecting the national security of the United States. I have considered this mitigating condition in conjunction with Applicant's in-laws in Nigeria. Applicant has established this mitigating condition concerning his in-laws for the same reasons as established concerning his siblings. FI MC ¶ 8(a) applies.

Applicant has raised FI MC ¶ 8(b) (there is no conflict of interest either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest). Applicant's vulnerability to duress is also important. Applicant has been in the United States for over 23 years and a United States citizen for almost 10 years. He has a child born in the United States, who is a citizen of the United States. Applicant's assets are in the United States, and he has no financial interest in Nigeria. Applicant's one return trip to Nigeria in the 23 years since he has left that country was solely for the purpose of visiting family. He has significant assets in the United States to include his home and a retirement account. Applicant has demonstrated that he is not unusually vulnerable to duress. Applicant has a limited sense of loyalty or obligation to his family in Nigeria, but has long standing relationship and connections in the United States. In addition to his own family, his mother and two sisters are in the United States. He has demonstrated that the lack of relationships with his siblings in Nigeria and the relationship with his family members in the United States will lead him to resolve any conflict of interest in favor of the United States. This also pertains to his in-laws in Nigeria. FI MC ¶ 8(b) applies.

Applicant has raised FI MC ¶ 8(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). At best, Applicant's contacts with his siblings and in-laws in Nigeria are minimal and he hardly knows them. He is unsure of their employment or their living conditions. He does not communicate with his in-laws and

his wife communicates with her parents only sporadically. He does not send his siblings or in-laws funds, or presents, and does not visit them. In fact, he encourages his siblings to come to the United States for a better life style.

Applicant has met his heavy burden to show that his family members in Nigeria do not cause a security concern. I conclude FI MC AGs ¶¶ 8(a), (b), and (c) are established.

### **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(a): "(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) 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 common sense 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 the facts and circumstances surrounding this case. The "whole person" concept requires consideration of all available information about Applicant, not a single item in isolation, to reach a common sense determination concerning Applicant's security worthiness. Applicant has family members in Nigeria, a country with a poor human rights record and lawlessness and terrorism. He also has strong ties to the United States. He has been in the United States for over 23 years and a citizen for almost ten years. He came to the United States to get a better education and has continued to strive to improve his status in the United States. His mother and two sisters live in the United States. He has a child who is a United States citizen and his wife is a permanent resident intending to become a United States citizen when she is eligible. His financial assets are in the United States and not in Nigeria. The family enjoys a typical United States life style. He is a valued and trusted employee, and his supervisors and co-workers attest to his loyalty, honesty, integrity, and trustworthiness. Overall, on balance 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 security concerns arising from foreign influence.

## 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

## Conclusion

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

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THOMAS M. CREAN  
Administrative Judge