

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant is a 46-year-old audit supervisor for a defense contractor. He came to the United States in 1997, and became a United States citizen in 2004. He obtained a United States passport that same year. He has family members and friends who are citizens and residents of Nigeria. He has continuous contact with these people. Applicant obtained a new Nigerian passport in June 2006, and used it to enter Nigeria in March 2007. He has not surrendered the passport. Applicant failed to present sufficient information to mitigate security concerns for foreign influence and foreign preference. Clearance is denied.

CASENO: 07-03309.h1

DATE: 07/30/2007

DATE: July 30, 2007

In Re:)	
)	
)	
-----)	ISCR Case No. 07-03309
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
THOMAS M. CREAN**

APPEARANCES

FOR GOVERNMENT

Julie R. Edmnds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 46-year-old audit supervisor for a defense contractor. He came to the United States in 1997, and became a United States citizen in 2004. He obtained a United States passport that same year. He has family members and friends who are citizens and residents of Nigeria. He has continuous contact with these people. Applicant obtained a new Nigerian passport in June 2006, and used it to enter Nigeria in March 2007. He has not surrendered the passport. Applicant failed to present sufficient information to mitigate security concerns for foreign influence and foreign preference. Clearance is denied.

STATEMENT OF THE CASE

On May 10, 2007, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), using the Adjudicative Guidelines (AG) promulgated by the President on December 29, 2005, and implemented by the Department of Defense for all SORs issued after September 1, 2006. Applicant acknowledged receipt of the SOR on May 21, 2007. The SOR alleges security concerns under Guideline B (Foreign Influence), and Guideline C (Foreign Preference).

Applicant answered the SOR in writing on May 30, 2007. He admitted all but one of the allegations, allegation I, under both guidelines, and provided a clarification for allegation I.1, that he denied. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on June 13, 2007. Applicant received a complete file of relevant material (FORM) on June 25, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. He proved additional information on July 8, 2007, and Department Counsel noted no objections to consideration of the additional information on July 12, 2007. The case was assigned to me on July 19, 2007.

FINDINGS OF FACT

Applicant is 46 years old and has been an audit supervisor for a defense contractor for eight years. He was born in Nigeria and came to the United States at age 35. He received his accounting degree from a Nigerian university before immigrating to the United States in 1997. He became a United States citizen in March 2004, and received a United States passport in May 2004. He also admitted that he renewed his Nigerian passport in July 2006 after becoming a United States citizen. His Nigerian passport is still current and in his possession. He used it in March 2007 to enter Nigeria to see his mother. He is married and his wife is a dual United States and Nigerian citizen residing with Applicant in the United States. He has two minor children born in the United States who are citizens and residents of the United States.

His mother is a resident and citizen of Nigeria. He has four siblings who are citizens and residents of Nigeria. His in-laws are both citizens and residents of Nigeria.¹ Applicant also admits he has brothers-in-law, three of which are residents and citizens of Nigeria, and one a citizen of Nigeria residing in Finland. He also admits he has four close friends, three who are citizens and

residents of Nigeria, and one a citizen of Nigeria residing in the United States. He also admits he owns real estate and stocks in Nigeria.²

Applicant noted that he does not represent any foreign government, especially the government of Nigeria. He is not and has never been a member of any militant organization that is a threat to the security of the United States. He maintains contact with his family members and old friends in Nigeria. Some of these contacts are with fellow religious leaders.³

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.⁴ The Department of State continuously issues travel warnings because of chaos and lawlessness in Nigeria. Lawlessness in Nigeria leads to car bombings, kidnaping 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.⁵ 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.⁶ Nigeria has made progress in a fragile democracy. Nigeria is one of the United States' key strategic partners in Africa. It become a major player in Africa helping to negotiate settlements with other countries and play a vital role in peacekeeping operations. Nigeria remains relatively stable although ethnic and religious clashes in part of the country are common.⁷

POLICIES

The President has "the authority to . . . control access to information bearing on national

¹Item 3; Item 4, at 6-7, 18-25.

²Item 3.

³Response to FORM., dated July 8, 2007.

⁴Item I.

⁵Item III.

⁶Item IV.

⁷Item V.

security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”⁸ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁹

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. The adjudicative guidelines for this case are the guidelines promulgated by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2007. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, and the whole person concept.¹⁰

The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. An administrative judge should consider: (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 applicant’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 pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.¹¹

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.¹² It is merely an indication that 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.¹³ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.¹⁴ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the

⁸*Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁹Directive ¶ E2.2.1.

¹⁰AG ¶ 2(a).

¹¹*Id.*

¹²*See* Exec. Or. 10865 § 7.

¹³Directive ¶ E3.1.14.

¹⁴ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

national interest to grant or continue his security clearance.”¹⁵ The government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating condition, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.¹⁶ “[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.”¹⁷ “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.”¹⁸

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline B - Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interest, may be manipulated or induced to help a foreign person, group, organization, or government in such 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 information and/or is associated with a risk of terrorism.

Guideline C - When an Applicant acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Applicant’s family members and friends in Nigeria raise Foreign Influence Disqualifying Condition (FI DC) ¶ 7(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*). Applicant has family members, his mother and siblings, his in-laws and brothers-in-law, friends and professional

¹⁵ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁶ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).

¹⁷ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

¹⁸*Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

associates, who are all citizens and residents of Nigeria. He admits he has continuous contact with these people that he considers natural and generally acceptable. Applicant's ownership of property and stock in Nigeria also raises FI DC ¶ 7(e) (*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 heightened risk of foreign influence or exploitation*). Applicant admits he owns property and stock in Nigeria from his early life in his native country. The presence of individuals and property and financial interests in Nigeria creates a heightened risk of exploitation, inducement, manipulation, pressure, or coercion for Applicant because of the general nature of violence and lawlessness in Nigeria as well as terrorist activities. There is no heightened concern for his brother-in-law who is a resident of Finland, and his friend who is a resident of the United States. Security concerns for these two individuals has not been established.

The disqualifying conditions can be mitigated by Foreign Influence Mitigating Conditions (FI MC) ¶ 8(a) (*the nature of the relationship 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 U.S.*); 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 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*); FC 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*); and FC MC ¶ 8(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 relationship between Applicant and his family and friends in Nigeria is not causal and is not infrequent. He admits to maintaining contact with them which he describes as natural and generally acceptable. Since Applicant's family and friends are located in Nigeria, a country that is violent, has significant criminal activity, with terrorism and lawlessness that the United States State Department continuously issues a travel warning for the country, Applicant can be placed in a position to chose between his family and friends and the interests of the United States. Applicant presents no information that the family and friends are not vulnerable to activities or individuals that would exploit, manipulate or pressure Applicant to make such choices.

Additionally, Applicant does not present sufficient information to conclude that he has such deep and longstanding relationships and loyalties in the United States that he would resolve conflicts in favor of the United States. In fact, the information leads to a conclusion that he does not have long standing loyalties. He came to the United States only 14 years ago. He obtained a Nigerian passport after he became a United States citizen and had a United States passport. He has not established that his relationships and loyalty to the United States is deep and longstanding. At best, his loyalties are split between Nigeria and the United States.

Applicant presented no information on the nature of his property and financial interests in Nigeria. While the property interest may be small and the stock worth only \$15,000, Applicant has not presented any information that the interests could not result in a conflict or could not be used to influence, manipulate or pressure. Applicant has failed to mitigate the security concerns for foreign influence.

Applicant’s possession of a valid Nigerian passport raises Foreign Preference Disqualifying Condition (FP DC) ¶ 10(a)(1) (*exercise of any right, privilege, or obligation of foreign citizenship after becoming a U.S. Citizen or through the foreign citizenship of a family member. This includes but is not limited to : (1) possession of a current foreign passport.* This disqualifying condition can be mitigated by Foreign Preference Mitigating Condition (FP MC) ¶ 11(d) (*use of a foreign passport is approved by the cognizant security authority, and ¶ 11(e) (the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated).* Applicant renewed his Nigerian passport in June 2006, and used it in March 2007 to enter Nigeria. He presented no information that he had the approval of a security official to use the passport. Applicant has the passport in his possession and it has not been destroyed or surrendered to cognizant security authority. Applicant’s possession of a current usable Nigerian passport establishes a foreign preference for Nigeria. I find against Applicant for foreign preference.

I carefully considered all of the circumstances in light of the “whole person” concept. I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	For Applicant
Subparagraph 1.m.:	Against Applicant
Subparagraph 1.n.:	Against Applicant
Subparagraph 1.o.:	Against Applicant

Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant
Subparagraph 2.b.:	Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant or continue a security clearance for Applicant. Clearance is denied.

Thomas M. Crean
Administrative Judge