



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-07879

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

May 29, 2008

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On November 10, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether his clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on December 12, 2007, and requested a hearing. The case was assigned to me on January 10, 2008, and was scheduled for hearing on February 20, 2008. A hearing was held on January 30, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At the hearing, the Government's case consisted of three exhibits; Applicant relied on one witness (himself)

and one exhibit. The transcript (R.T.) was received on February 28, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is granted.

Besides its three exhibits, the Government requested administrative notice of five documents: *Background Note: Nigeria*, U.S. Department of State (October 2007); *Consular Information Sheet on Nigeria*, U.S. Department of State (April 2007); *Travel Warning: Nigeria*, U.S. Department of State (October 2007); *Country Reports on Human Rights Practices - 2006, Nigeria*, U.S. Department of State (March 2007); Congressional Research Service, *CRS Report for Congress, Nigeria: Current Issues* (April 2007).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 (App. Bd. April 12, 2007); ISCR Case No. 05-11292 (App. Bd. April 12, 2007). Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the above-named background reports addressing the geopolitical situation in Nigeria. Administrative notice was extended to the documents themselves, consistent with the provisions of Rule 201 of Fed. R. Evi. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing Nigeria's current state.

SUMMARY OF PLEADINGS

Under Guideline B, Applicant is alleged (a) to have a spouse who is a dual citizen of Nigeria and the U.S., residing in the U.S., (b) to have a mother who is a dual citizen of Nigeria and the U.S., residing in the U.S., (c) to have a father who is a citizen and resident of Nigeria, (d) to have a brother who is a citizen and resident of Nigeria, (e) to have a sister who is citizen and resident of Nigeria, and (f) to have a father-in-law and mother-in-law who are citizens and residents of Nigeria.

Under Guideline C, Applicant is alleged to be a U.S. citizen by birth who applied for and was issued a Nigerian passport in January 2005, which is not set to expire until January 2010.

For his answer to the SOR, Applicant admitted some of the allegations, but denied that his spouse and mother are dual citizens. He claimed that both his spouse and mother are citizens of Nigeria only. He claimed his own dual citizenship is based solely on his parents having Nigerian citizenship. Applicant stressed his willingness to resolve all of his Nigerian citizenship issues.

Findings of Fact

Applicant is a 29-year-old software engineer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant's background

Applicant was born in the U.S. with Nigerian heritage. Both of his parents are Nigerian citizens. Applicant established his Nigerian citizenship through proof of his birth to Nigerian citizens (R.T., at 41). While his mother resides in the U.S. on a work visa, she retains her Nigerian citizenship. Applicant returned to Nigeria with his parents to live at the age of four (R.T., at 36). Following two years of residence in Nigeria, he and his parents relocated to Great Britain. While in England, his only sister was born to his parents. Besides his sister, he has two brothers (ages 29 and 21, respectively).

Applicant immigrated to the U.S. in 1996 and pursued his college education at recognized universities of higher learning. He received a bachelor of science degree in computer science in 2004 (see ex. 1; R.T., at 30, 39). Since March 2006, he has worked for his current employer as a software engineer (R.T., at 40). Applicant documents obtaining his U.S. passport in December 2004, and surrendering his Nigerian passport (due to expire in January 2010) to his facility security officer (FSO) in 2007 (see ex. B; R.T., at 82-83). He had held the Nigerian passport since birth, and renewed it in 2005 out of concern he might want to use it again in the future (see ex. 3; R.T., at 83, 86-87). Applicant has expressed conditional willingness to renounce his Nigerian citizenship, should this become necessary to obtain his security clearance (see ex. 3).

Applicant traveled to Nigeria three times since immigrating to the U.S. in 1996: in December 1996, December 1997, and December 2004 (R.T., at 32-37). Each time, he made these trips to visit his family over the Christmas holidays, and never made contact with the Nigerian government (R.T., at 34-35, 79). Having only his Nigerian passport at the time, Applicant used his Nigerian passport to enter and exit Nigeria in December 1996 (see ex. 2). Having just received his U.S. passport in December 1997, he used this passport to enter and exit Nigeria in 1997. While he used his Nigerian passport to enter Nigeria in 2004, records document that he used his U.S. passport to depart Nigeria on the same trip (see ex. 2; R.T., at 80). Applicant attributes his use of his U.S. passport on his return to both generally imposed Nigerian restrictions on exiting Nigeria without a visa and the likely expiration of his Nigerian passport (R.T., at 33-34, 80).

Applicant's spouse immigrated to the U.S. from Nigeria around 1996 (R.T., at 46). Applicant met his spouse in the U.S. and married her in 2001. They have no children. She has a degree in biology and work in a blood clinic for several years but is not currently working (R.T., at 46-47). Applicant is separated from his wife, and while he is still legally married to her, he is in the process of getting a divorce (see ex. A). His wife owns real estate in the U.S., but has never petitioned for U.S. citizenship (R.T., at 47-48). She spends about six months a year in Nigeria, and without her marriage to him, Applicant does not expect her to be able to obtain a green card to work in the U.S. or successfully petition for permanent U.S. residency status (R.T., at 45). His spouse has no known contacts with the Nigerian government (R.T., at 49).

Both of Applicant's parents are Nigerian citizens and residents. His mother has a green card and spends five to six months in the U.S. (R.T., at 30-31, 50). His father has

reportedly applied for a green card to relocate in the U.S., but currently resides in Nigeria (R.T., at 30-31). Applicant's father was born and raised in Nigeria, and is an engineer by profession. His father is not a prominent figure in Nigeria: He has never worked for the Nigerian government, and has no ties to the government (R.T., at 74). His father and mother own and manage real estate in Nigeria and are currently involved in a start-up fish or pig farm, which has yet to really take off (R.T., at 50-56).

Applicant's father once served in the Nigerian military, retired as a one-star general, and has a military pension (R.T., at 51-52). His father, quite possibly, maintains social relationships with some of his old military colleagues (R.T., at 53). Since retiring from the military, he has applied for a green card to relocate in the U.S. and helps Applicant's mother with her local business interests (R.T., at 50-56). Applicant's father is a member of the Igbo tribe (one of three principal tribes in Nigeria), whose homeland is situated in Eastern Nigeria (R.T., at 59-60). The Igbos have no leadership hierarchy (R.T., at 61-62). The tribe of the currently dominant political party in Nigeria is the Yoruba tribe; the Yoruba tribe is also the most affluent of the three major tribes extant in Nigeria. Operating in the Niger Delta region in Southern Nigeria, which has been such an ongoing source of reported violence and terrorism in recent years over uneven distribution of oil revenues (R.T., at 89-90), is a sub tribe of the Igbos which split off from the Ibos years ago and have their own ethnic group (R.T., at 60-61).

In years past, inter-tribal conflicts have erupted in Nigeria. Applicant recalls a serious civil war in 1967 that was essentially waged along tribal lines between Igbos and Hausas (R.T., at 62-63). Tribal conflicts can reflect "a whole divided rule concept," which accounts for the long history of military presidents in Nigeria who come from the most affluent and politically dominant Hausa tribe (R.T., at 63-66, 89-90). Nigeria's former president (Obasanjo) presents the exception: He belongs to the Yoruba tribe (R.T., at 63-64).

Applicant's father has two sisters and several brothers. Applicant has never met any of these aunts and uncles, and has no contact with them (R.T., at 57-58). Applicant did not maintain contact with his grandfather on his father's side (now deceased) who used to reside in the north of Nigeria and is believed to have been a civil servant (R.T., at 57-58). Applicant's father inherited property from his grandfather (R.T., at 56). On his mother's side, his mother has one brother and a sister. The brother resides in the U.S. (R.T., at 68). Applicant has never been close to this uncle and maintains no contact with him (R.T., at 69). Applicant's aunt from his mother's side is now a U.S. citizen and occasionally contacts him (R.T., at 70).

Applicant's mother spends several months out of the year in the U.S., and owns real estate in this country (which she leases out), but returns to Nigeria for part of the year to look after her Nigerian business interests and see Applicant's father (R.T., at 48-50). Like his father, his mother was also born and raised in Nigeria and is a member of the Ibo tribe of Eastern Nigeria. She has never worked for the Nigerian government and has no known contacts with the government (R.T., at 49).

Applicant's oldest brother immigrated to the U.S. in 1995 (one year before Applicant) and is a naturalized U.S. citizen (see ex. 1; R.T., at 30). Applicant's youngest brother resides with his parents in Nigeria, is a Nigerian citizen by birth, and is pursuing a college curriculum (R.T., at 32, 71-72). Applicant's only sister resides in Great Britain, where she is pursuing graduate studies. She is a dual citizen of Great Britain and Nigeria (R.T., at 31-32, 75-76). None of his siblings have ever served in the Nigerian military or have worked for the Nigerian government. To the best of Applicant's knowledge, none of his siblings are at any known risk to coercion, pressure or influence by the Nigerian government and/or military officials.

Applicant's mother-in-law and father-in-law were both born in Nigeria and currently are citizens and residents of Nigeria (R.T., at 77-78). Neither has ever worked for the Nigerian government. They each have relatives who reside in Nigeria.

Applicant has no friends or associates who are employed by any foreign government. He has no assets or financial interests in Nigeria or other foreign country; albeit he could possibly inherit property from his parents (R.T., at 58, 67-68). By contrast, all of his assets are in the U.S. (R.T., at 78) He assures he voted in his first U.S. election in 2004 and intends to vote in this year's presidential primary and general election (R.T., at 87-88).

Applicant maintains regular bi-monthly contacts (either by telephone or e-mail) with his parents (R.T., at 66-67). His parents are financially independent and do not rely on Applicant for any financial support. He has regular contact, too, with his sister who expects to complete her graduate studies in Great Britain this year and will likely settle in that country (R.T., at 76-77).

Besides his parents and his sister, Applicant maintains contact with his aunt (a dual U.S./Nigerian citizen) and younger brother who still resides in Nigeria (R.T., at 74). However, he has much less telephone contact with these other family members (R.T., at 77). Applicant has never had much contact with his in-laws (R.T., at 77), and does not expect to maintain any contact at all in the wake of his pending divorce. Applicant has no reason to believe that any members of his wife's family who reside in Nigeria are at any risk to pressure or influence from the Nigerian government.

Nigeria's country status

Nigeria is a federal republic in western Africa that gained its independence from Great Britain in 1960 as a federation of three regions (northern, western and eastern). Today, Nigeria comprises 36 states and the capital territory of Lagos. It has a population base of 140 million (see *Background Note: Nigeria*, U.S. Department of State (October 2007)). Since gaining its independence, Nigeria has experienced periods of political instability, economic crises, ethnic and religious conflict, extreme poverty, a lack of law and order, judicial corruption, and military coups (Congressional Research Service, *CRS Report for Congress, Nigeria: Current Issues* (April 2007)). Nigeria has been ruled by its

military for 28 of its 43 years since independence. The country returned to civilian rule in May 1999 (*see id.*, at 1-3).

Besides being the largest trading partner of the U.S. in sub-Saharan Africa, with total two-way trade valued at \$30.8 billion, Nigeria remains Africa's largest oil producer. State Department reports confirm that Nigeria's bilateral relationship with the U.S. has continued to improve (*see id.*, at 11). The trade balance favors, though, significantly favors Nigeria due to its oil exports, which continue to be substantial,

Insurgent activities have brought turmoil to the Niger Delta region's oil producing sector over perceived uneven and/or unfair oil revenue distribution (*see Background Note: Nigeria, supra*, at 7). In response to numerous reports of kidnaping for ransom of persons associated with the petroleum sector (including U.S. citizens), the U.S. State Department has updated its *Travel Warning* for Nigeria in October 2007 (*see Travel Warning: Nigeria*, U.S. Department of State (October 2007)). The *Travel Warning* advises U.S. citizens of the dangers of travel to Nigeria and of further deterioration of security in the Niger Delta region (*see id.*; *Consular Information Sheet on Nigeria*, U.S. Department of State (April 2007)). The *Travel Warning* states, too, that al-Qaeda leadership operating in the region has expressed interest in overthrowing the ruling authorities (*see id.*, at 1).

Commenting on news reports of ransom kidnaping of oil sector personnel in recent years, Applicant attributes the actions to hatched schemes by radical groups in the oil-rich Delta region to extort money out of foreign governments (R.T., at 92). Applicant acknowledged the created tensions with the U.S. that these kidnappings have induced and the long-term impacts these actions have on Nigeria's oil industry in general.

Despite its democratic government and an established judiciary, Nigeria's government suffers from a poor human rights record (*see Country Reports on Human Rights Practices - 2006, Nigeria*, U.S. Department of State (March 2007)). The State Department's *Country Reports on Human Rights Practices* documents Nigerian government officials at all levels committing serious abuses against Nigeria's citizens and visitors. Sani Abacha's regime was especially repressive. Under his regime, all branches of the security forces committed serious human rights abuses (*id.*, at 5). Documented abuses by security forces include politically motivated, extrajudicial killings as well as torture and arbitrary arrest (*see id.*). Instability and incidents of armed conflicts between religious, political, and ethnic factions comprising Muslim, Christian and other ethnic groups have marked Nigeria's political landscape (*see Travel Warning: Nigeria, supra*, at 1). Since Abacha's death in June 1998, his replacements have released most known civilian political detainees (*see Background Note: Nigeria, supra*, at 5).

In the areas of peace and security, the U.S. has supported peacekeeping and simulation centers at Nigeria's armed forces staff college (Africa's only such center), while promoting effective civilian oversight of the military and its adherence to human rights norms (*see Background Note: Nigeria, supra*, at 12). In addition to its efforts aimed at fostering maritime cooperation with security services in the Niger Delta region, the U.S.

has continued to support the European union's leading role in helping Nigeria fight corruption, organized criminal elements, drug traffickers, and terrorists (*see id.*). Reports confirm that Nigeria remains a member in good standing of ECOWAS, a West-African trade union and a constructive trading partner with the U.S. (*see id.*).

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by administrative judges in the decision-making process covering DOHA cases. These Guidelines require the administrative judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the administrative judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the administrative judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy concerns are pertinent herein:

Foreign Influence

The Concern: "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 the this Guideline can and should considered 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." See Adjudicative Guideline (AG) B, ¶ 6.

Foreign Preference

The Concern: "When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States." See AG C, ¶ 9.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that

to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

ANALYSIS

Applicant presents as a conscientious software engineer for a defense contractor who after being born and raised in Nigeria, immigrated to the U.S. in 1996 to seek better economic opportunities. Claiming the need for a Nigerian passport to aid him in traveling back to Nigeria, he retained his Nigerian passport after becoming a U.S. citizen and obtaining a U.S. passport.

Dual citizenship concerns necessarily entail country allegiance assessments and invite critical considerations over acts indicating a preference or not for the interests of the foreign country over the interests of the U.S. In a different vein, the continued residence of his immediate family members (his parents and younger brother) and his wife's immediate family members in Nigeria raise potential concerns about their being vulnerable to future pressure or duress that could result in the compromise of classified information. The issues, as such, raise concerns over Applicant's preference for a foreign country over the U.S. and the potential for members of Applicant's immediate and extended family being placed at risk to pressure or duress to induce Applicant to divulge classified information he might be privy to.

Foreign Preference

By virtue of his birth in the United States to parents of Nigerian descent and citizenship, Applicant was endowed with Nigerian citizenship through his parents. This citizenship could not be lost except by express renunciation, approved by the Nigerian

Government, which Applicant has never explored. To the contrary, three years ago he applied for the renewal of his Nigerian passport (an active exercise of dual citizenship) and received one. He has never used his renewed Nigerian passport, and has since surrendered it to his employer's FSO. He has pledged never to apply for a Nigerian passport again, and will always use his U.S. passport when he travels on family matters. Risks of his being taken hostage behind Nigerian lines and denied the customary diplomatic intercession made available to U.S. citizens traveling on US passports are significantly reduced now that he has surrendered his Nigerian passport.

The Appeal Board has tended to blur convenience/force of law distinctions when appraising legal necessity passport usage in multiple return to country situations (as here). See ISCR Case No. 99-0424 (App. Bd. February 8, 2001); ISCR Case No. 99-0254 (App. Bd. February 16, 2000). To be sure, his initial exercise of choice to renew and retain his Nigerian passport out of desire to preserve his options when traveling to Nigeria after becoming a U.S. citizen to see his family is itself a voluntary election, not a submission to legal compulsion, when made in juxtaposition to known security risks extant in traveling to a country that lacks acceptable security protections against terrorists operating within the country. By applying for renewal of a Nigerian passport, Applicant provides some indicia of a conscious preference for Nigeria, even if it was for perfectly logical and understandable reasons: wanting to see his family members.

So, even Applicant's limited exercise of dual citizenship is sufficient under the facts of this case to invoke one disqualifying condition of the Guidelines covering foreign preference: DC 10(a), "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 (inclusive of possession of a current foreign passport)." Concerns over continued Applicant preference for Nigeria through his continued possession and use of his Nigerian passport are considerable for so long as he retained his Nigerian passport and dual Nigerian citizenship.

Applicant, though, has documented his surrendering his Nigerian passport and assures his preference is for the U.S. He has no assets in Nigeria and has never voted in a Nigerian election, served in Nigeria's military, or worked for Nigeria's government. By contrast, all of his assets and financial interests are situated in the U.S., and he recently voted in a U.S. election. And in his case, his dual citizenship with Nigeria is based solely on his parents' Nigerian citizenship and his birth in that country. Based on these considerations, one mitigating condition is fully applicable to Applicant's case: MC 11(e), "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated." Another mitigating condition warrants some consideration, too, in light of his expressed interest in renouncing his Nigerian citizenship: MC 11(b), "the individual has expressed a willingness to renounce dual citizenship." However, because he conditioned his willingness to renounce his Nigerian citizenship on his gaining clearance access, the mitigating condition has only limited application.

Two potentially applicable mitigating conditions may not be considered. Having exercised a privilege of his dual Nigerian citizenship by renewing his Nigerian passport in 2005, Applicant is not in a position to claim the mitigation benefits of these two mitigating conditions: MC 11(a), “dual citizenship is based solely on his parents’ citizenship or birth in a foreign country,” and MC 11(c), “exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor.”

Considering all of the circumstances surrounding Applicant’s dual citizenship exercise and demonstrated meaningful mitigation efforts, conclusions warrant that Applicant’s exhibited active dual citizenship by his renewing and using a Nigerian passport after becoming a U.S. citizen is mitigated. His demonstrated mitigation commitments satisfy expressed Appeal Board burden requirements relative to successful discounting residual security risks that exist with his continued exercise of dual Nigerian citizenship. Favorable conclusions warrant with respect to sub-paragraph 2.a of Guideline C.

Foreign Influence

Security concerns are also raised over the presence of Applicant’s immediate family (*i.e.*, his parents and brother) and in-laws who are citizens and residents of Nigeria, a country historically plagued by military coups, domestic turmoil, and a poor human rights record. Department Counsel urges security concerns over risks that Applicant’s parents, brother and in-laws residing in Nigeria might be subject to undue foreign influence by Nigerian government and military authorities to access classified information in Applicant’s possession or control. Because Applicant’s immediate family members and in-laws reside in Nigeria, they present potential heightened security risks covered by disqualifying condition (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,” of the Adjudication Guidelines for foreign influence. The citizenship/residence status of these immediate family members and in-laws in Nigeria pose some potential concerns for Applicant because of the risks of undue foreign influence that could compromise sensitive or classified information under Applicant’s possession and/or control.

Because Applicant’s father has prior military service (although aged for the most part), some consideration of DC 7(b), “connection 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,” is warranted as well. Applicant’s contacts with his parents and brother residing in Nigeria afford him some potential for accessing Nigerian officials who might be interested in proprietary, sensitive, or even classified information that Applicant is privy to.

Because of the paucity of contacts Applicant has historically had with his in-laws, and even less likelihood of future contact in view of his pending divorce situation, potential risks associated with his in-laws residing in Nigeria must be considerably discounted. Moreover, none of Applicant's immediate family members have any identified affiliations or contacts with Nigerian officials currently known to be associated with intelligence or military organizations interested in collecting proprietary or sensitive information in the U.S.

Further, from what is known from the presented evidence, none of Applicant's immediate family and in-laws residing in Nigeria have any (a) political affiliations with Nigeria's government or military, (b) history to date of being subjected to any coercion or influence, or (c) appear to be vulnerable to the same. Applicant's mother has business interests in Nigeria and the U.S. and his father had military experience in Nigeria for many years before he retired with a military pension. With the exception of his father's government-funded pension benefit, his parents have no financial interests associated with the Nigerian government. While his brother is privately employed in Nigeria, he, too, has little visible connections with the Nigerian government or military/intelligence establishment.

Nigeria, although a country reported to have a history of military coups and human rights violations, enjoys a non-hostile relationship with the U.S., and is a democratic government with some respect for the rule of law in the areas of foreign trade and commerce. While Nigeria has a documented record of turmoil and kidnaping in its oil-rich Niger Delta region, it generally enjoys stable diplomatic and trade relationships with the U.S.

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about Nigeria.

Nigeria remains a non-hostile trading partner of the U.S. and is a country whose democratic institutions are not wholly incompatible with our own traditions and respect for human rights and the rule of law. Unlike the old Adjudicative Guidelines, the new ones do take into account the country's demonstrated relations with the U.S. as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime involved do matter. Nigeria, while reported to have human rights and insurgency issues in its Niger Delta region, is still a country with no known recent history of government-sponsored hostage taking or disposition for exerting undue influence against family members to obtain either classified information, or unclassified economic and proprietary data.

As for security concerns associated with the presence of Applicant's relatives in Nigeria , any potential heightened risk of a hostage situation or undue foreign influence brought in the hopes of eliciting either classified information or economic or proprietary data out of Applicant through his family members residing in Nigeria is quite remote. Applicant, accordingly, may take advantage of one important mitigating condition: MC 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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 a foreign individual, group, organization, or government and the interests of the U.S."

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," has application, too, to Applicant's situation. Since relocating to the U.S. in 1996, Applicant has demonstrated loyalty, patriotism, and professional commitments to the U.S. Whatever potential conflicts he may have through his dual Nigerian citizenship and contacts with his family members in Nigeria have been more than counterbalanced by his demonstrated U.S. citizenship responsibilities.

Appraising risks associated with Applicant's dual citizenship status with Nigeria, the presence of Applicant family members in Nigeria, his past family visits to Nigeria, and his regular contacts with these family members, any risk of undue foreign influence on Applicant and/or his parents, siblings, and to an even lesser extent, his in-laws, who reside in Nigeria would appear to be insubstantial, and clearly not of the magnitude that could make them subject to a heightened security risk of coercion, pressure or compromise under Guideline B.

Whole person assessment also serves to minimize Applicant's exposure to conflict of interests with his Nigerian family members. Not only is Applicant a U.S. citizen by birth and later received his college training at recognized American colleges following his relocation here, but he has made every effort to work, save, and pursue his financial interests exclusively in the U.S.

In Applicant's case, any likelihood of coercion, pressure, or influence being brought to bear on any of his immediate family members and in-laws would appear to be minimal. By all reasonable accounts of the presented record, Applicant has no visible conflicts of interest with Nigerian citizen/residents or property interests in Nigeria that could be at risk to exploitation or compromise by Nigerian military or intelligence officials.

Overall, any potential security concerns attributable to Applicant's family members and in-laws residing in Nigeria are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to his familial

relationships in Nigeria. Favorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a through 1.f of Guideline B.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E2.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE B: (FOREIGN INFLUENCE):	FOR APPLICANT
Sub-paras. 1.a through 1.f.:	FOR APPLICANT
GUIDELINE C (FOREIGN PREFERENCE):	FOR APPLICANT
Sub-para. 2.a:	FOR APPLICANT

CONCLUSIONS

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge