



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



In the matter of:)	
)	
)	ISCR Case No. 07-04612
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel

For Applicant: Elizabeth Newman, Esquire

May 21, 2008

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to mitigate the Government’s security concerns under the Foreign Preference, Foreign Influence, and Personal Conduct adjudicative guidelines. His eligibility for a security clearance is denied.

On March 18, 2005, Applicant signed and certified a Security Clearance Application (SF-86). On October 11, 2006, Applicant signed an Electronic Questionnaire for Sensitive Positions. On October 3, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline C, Foreign Preference, Guideline B, Foreign Influence, and Guideline E, Personal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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.

On October 24, 2007, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to an administrative judge on December 10, 2007, and it was then reassigned to a second administrative judge on January 9, 2008. On January 31, 2008, the case was assigned to me. I convened a hearing on February 11, 2008, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called one witness, introduced nine exhibits (Ex.), and offered for administrative notice facts about Nigeria compiled from five official documents of the U.S. Government. (The four-page compilation was identified as "Administrative Notice." The documents from which the compilation was drawn were marked HE I through V.) Ex. 1 through 4 were admitted without objection. Ex. 5 and Ex. 6 were admitted over Applicant's objections. Ex. 7, 8, and 9 were withdrawn. Applicant called two witnesses and testified on this own behalf. The hearing was continued to permit the parties to pursue additional discovery.

The hearing was resumed on April 17, 2008. Applicant submitted one exhibit, which was marked as Ex. A and admitted without objection. Applicant submitted for administrative notice a three-page document containing facts about Nigeria derived from official U.S. government publications previously offered by the Government. This document was marked HE VI and included in the record. Applicant again testified on his own behalf. DOHA received the transcript of the February 11, 2008 hearing (Tr. 1) on February 20, 2008. DOHA received the transcript of the April 17, 2008 hearing (Tr. II) on April 28, 2008.

Findings of Fact

The SOR contains four allegations of disqualifying conduct under AG C, Foreign Preference (SOR ¶¶ 1.a. through 1.d.); two allegations of disqualifying conduct under AG B, Foreign Influence (SOR ¶¶ 2.a. and 2.b.); and three allegations of disqualifying conduct under AG E, Personal Conduct. In his Answer to the SOR, Applicant admitted three AG C allegations and denied one. He admitted both AG B allegations in the SOR, and he denied the three AG E allegations in the SOR. He also provided additional information to support his request for eligibility for a security clearance.

After a thorough review of the record in the case, including witness testimony, exhibits, relevant policies, and applicable adjudicative guidelines, I make the following findings of fact:

Applicant is 50 years old, a Certified Public Accountant (CPA), and employed since May 2003 as a senior manager by a government contractor.¹ Applicant was born

¹ Applicant has not held a security clearance in the past. However, he claimed the U.S. Postal Service conducted an investigation of his background in July 2001. (Ex. 2.)

in Nigeria and immigrated to the U.S. in 1980. He came to the U.S. to pursue his education, and in 1983, he was awarded a bachelor of business administration degree from a U.S. university. (Ex. 2; Tr. I, 75-77.)

Applicant was married to a U.S. citizen from 1982 to 1990, when they divorced. In August 2002, Applicant was in Nigeria and married in absentia to his second wife, a citizen of Nigeria who had three children born in Nigeria. At the time of the marriage in absentia, Applicant's second wife was residing in the U.S. with her children. Applicant adopted his second wife's children. She became a U.S. citizen in 2005, and her three children also become U.S. citizens. Applicant and his second wife have one child together. (Ex. 2; Tr. I, 174-177, 181-182.)

Applicant's mother, who is 80 years old, is a citizen and resident of Nigeria. Applicant sends his mother approximately \$100 every month for her support. Recently, he has increased the support he sends his mother to about \$200 per month because she needs additional money to pay for cancer treatments. At his hearing, he testified he last spoke with his mother about 2 to 3 months ago. (Ex. 4; Tr. I, 122-126.)

Applicant became a naturalized U.S. citizen on January 15, 1999. At the time he became a U.S. citizen, he held a Nigerian passport with an expiration date of May 2001. He applied for a U.S. passport. On January 28, 1999, he was issued a U.S. passport. He used his U.S. passport to travel to Nigeria from 1999 until about September 11, 2001. On November 20, 2001, Applicant renewed his Nigerian passport to use when traveling outside the U.S. He renewed the Nigerian passport because he feared he might be targeted by terrorists if he presented his U.S. passport when traveling to Nigeria. He used his Nigerian passport to enter and exit Nigeria during the periods from July 19, 2002 through September 17, 2002 and from December 31, 2002 through at least May 21, 2003. (Ex. 2; Ex. 3; Ex. 4; Answer to SOR; Tr. I, 80-81, 149-150, 102-106.)

Applicant traveled to Nigeria in 2002 and 2003 in order to participate in a political movement.² Later, the movement coalesced into a political party. Applicant ran for a high public office in Nigeria as a member of the political party. Applicant told his future employer, who was also a personal friend, that he planned to run for public office in Nigeria. The election was held in April 2003. Applicant did not vote in the election. Applicant was not elected. He returned to the U.S. in May 2003. (Ex. 5; Ex. 6; Tr. I, 103-104, 110, 114-117, 160, 166; Tr. II, 29-30.)

Applicant denied that his acquisition and use of a Nigerian passport after becoming a U.S. citizen was an exercise of dual citizenship. He denied that running for political office in Nigeria was an exercise of dual citizenship. He stated he thought his Nigerian citizenship was extinguished when he pledged his allegiance to the U.S. and

² During the time he was in Nigeria, he defined himself as a self-employed consultant. He denied he worked for wages in Nigeria. He asserted that he supported himself by living off \$20,000 in savings that he took with him.

accepted U.S. citizenship. He did not believe it was necessary to communicate with authorized officials of the Nigerian government to renounce his Nigerian citizenship when he became a U.S. citizen. He stated his involvement with the political movement in Nigeria was to educate Nigerians. He also stated that the political party that evolved from the movement had no chance of winning an election in Nigeria. (Tr. I, 78-79, 84-88, 113-115.)

I carefully observed and considered Applicant's demeanor and credibility at his hearing. I conclude that Applicant was not credible when he denied he exercised dual citizenship with Nigeria and the United States.

Applicant completed a security clearance application (SF-86) on March 18, 2005. Question 15 on the SF-86 reads as follows: "**Your Foreign Activities – Passport** In the last 7 years, have you had an active passport that was issued by a foreign government?" In response to question 15, Applicant answered affirmatively. He stated that he had obtained a Nigerian passport, valid for five years, on November 20, 2001. He explained further: "Obtained passport after September 11, 2001 terrorist incident in the USA primarily for identification purposes when traveling outside USA." In response to Question 16 on the SF-86, Applicant provided the following information on his foreign travel: "2002/12/02 to 2003/05/03 NIGERIA Participated as candidate for state election in Lagos in May 2003." (Ex. 2.)

Applicant was interviewed by an authorized investigator on August 25, 2006. He told the investigator he had kept his Nigerian passport which had expired in May 2001. He further stated he did not intend to renew his Nigerian passport. The report of the personal subject interview was not clear whether Applicant was referring to his Nigerian passport which expired in May 2001 or his Nigerian passport scheduled to expire on November 19, 2006. The investigator testified that if Applicant had told him he had renewed his Nigerian passport after it expired in May 2001, he would have noted that fact in his report. The investigator did not have access to Applicant's SF-86 and did not know Applicant had renewed his Nigerian passport in November 2001. Applicant also told the investigator that "all foreign travel since becoming a U.S. citizen has been on the U.S. passport." (Ex. 4: Personal Subject Interview; Tr. I 61-64; 67-71.)

In the interview, Applicant described his 2002 travel to Nigeria as volunteer work for a non-political group seeking the betterment of Nigeria through education.³ He told the investigator that he found conditions in Nigeria oppressive, and he stated that the people did not respond to his efforts to educate them. He stated that he gave up in May 2003 and returned to the U.S. (Ex. 4: Personal Subject Interview; Tr. I, 63-64.)

The authorized investigator who interviewed Applicant appeared as a government witness and testified that the personal subject interview report he prepared

³ Government Ex. 6 shows the homepage of a Nigerian political party. A photograph of Applicant in Nigerian native dress appears on the homepage. The homepage identifies him as the party's candidate.

after interviewing Applicant accurately reflected what Applicant had told him. (Tr. I, 58-64.)

Applicant's answer to the SOR was dated October 24, 2007. In his answer to the SOR, Applicant stated he had voided his expired Nigerian passports and had sent them, along with a letter renouncing his Nigerian citizenship, to the Nigerian embassy. Applicant asserted the letter was attached to his answer, but it was not. At his resumed hearing, Applicant provided a letter, dated October 16, 2007, which read, in pertinent part, as follows: "I am a former Nigerian citizen and would like to return issued Nigerian Passports in my possession to the Nigerian authority. Please let me know when I can bring the passports to the embassy and obtain a written acknowledgement from your office." Applicant included his mailing address and telephone number on the letter. (Ex. A.)

Applicant retained the passports. He cancelled them by marking each page "VOID" in the presence of his security officer. Department Counsel stipulated to Applicant's counsel's representation that the passports were cancelled. Applicant did not send a letter to the Nigerian embassy renouncing his Nigerian citizenship. At his hearing he testified he had not received a response from the Nigerian embassy to his letter of October 16, 2007. He testified he had not initiated any follow-up inquiries to the embassy, and he had not returned his voided passports to the embassy. He stated he had not officially renounced his Nigerian citizenship because he didn't think that it was necessary after he "swore to the flag of the United States" at his naturalization ceremony. (Answer to SOR; Ex. 3; Tr. I, 186; Tr. II, 14-21, 24.)

I take administrative notice of the following facts about Nigeria, drawn from official US government documents:⁴

Nigeria is a federal republic in western Africa composed of 36 states and a capital territory. It has a population of approximately 140 million, making it the most populous nation in Africa, accounting for half of West Africa's people. Since gaining independence from Britain in 1960, Nigeria has experienced periods of political instability and turmoil, as well as economic crisis. Nigerian political life has been scarred by conflict along both ethnic and geographic lines and dominated by military coups and long military-imposed transition programs rather than civilian rule. The military has ruled Nigeria for approximately 28 of its 47 years since independence, and in May 1999, Nigeria returned to civilian rule.

⁴ See U.S. Department of State, *Background Note: Nigeria*, dated October 30, 2007; U.S. Department of State, *Consular Information Sheet, Nigeria*, dated April 16, 2007; U.S. Department of State, *Travel Warning: Nigeria*, dated October 30, 2007; U.S. Department of State, *Nigeria: Country Reports on Human Rights Practices – 2006*, dated March 6, 2007; and Congressional Research Service, *CRS Report for Congress, Nigeria: Current Issues*, dated April 12, 2007. The Government's summary of these documents is marked HE I. Applicant's summary of these documents is marked HE VI.

Presidential and legislative elections were held in Nigeria on April 21, 2007, and President Obasanjo stepped down on May 29, 2007. The current president is Musu Umaru Yar'adua, a moderate and respected governor from the northern state of Katsina, who pledged publicly to make electoral reform, peace, and security in the Niger Delta, and continued electoral reform his top priorities.

The Nigerian government's human rights record is poor, and the government continues to commit serious human rights abuses. The State Department's *Report on Human Rights Practices* notes government officials at all levels committed serious abuses. U.S. citizens have experienced harassment and shakedowns at checkpoints and during encounters with Nigerian officials. Areas of Nigeria are marked by serious instability and outbreaks of armed conflicts between religious, political, and ethnic factions. Ongoing religious and ethnic conflicts exist in Nigeria between Muslim and Christian groups and among other ethnic groups.

The lack of law and order in Nigeria poses considerable risks to travelers, including the risk of armed robbery or kidnapping. Violent crime, committed by ordinary criminals, as well as by persons in police and military uniforms, can occur throughout the country. The U.S. Department of State updated its *Travel Warning* for Nigeria on October 30, 2007, in which it warned U.S. citizens of the dangers of travel to Nigeria and of continued deteriorations of the security situation in the Niger Delta region. Kidnapping for ransom of persons associated with the petroleum sector, including U.S. citizens, remains common in the Niger Delta area. The *Travel Warning* also states that al-Qaida leadership has expressed an interest in overthrowing the government of Nigeria.

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, the administrative judge applies these guidelines 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 C, Foreign Preference

Under AG ¶ 9, the security concern involving foreign preference arises “[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States.” Such an individual “may be prone to provide information or make decisions that are harmful to the interests of the United States.”

AG ¶ 10 describes several conditions that could raise a security concern and may be disqualifying. These disqualifying conditions are as follows:

(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. This includes but is not limited to:

(1) possession of a current foreign passport;

- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and,
- (7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant acquired a U.S. passport and a Nigerian passport after becoming a U.S. citizen. He used his Nigerian passport to enter and exit Nigeria from July 19, 2002 through September 17, 2002 and from December 31, 2002 to at least May 21, 2003. Applicant's acquisition of a Nigerian passport after becoming a U.S. citizen raises a concern that he actively exercised dual citizenship with Nigeria. While in Nigeria in 2002 and 2003, he involved himself in Nigerian politics and ran for public office in Nigeria. These actions showed an allegiance to a country other than the U.S.

I have carefully reviewed the facts of Applicant's case and the Foreign Preference AG. I conclude that Applicant's conduct raises potentially disqualifying security concerns under AG ¶10 (a)(1), ¶10(a)(6), and AG ¶10 (d).

Under AG ¶11(a), dual citizenship might be mitigated if it is based solely on an applicant's parents' citizenship or birth in a foreign country. Under AG ¶ 11(b), an individual's dual citizenship might be mitigated if he or she has expressed a willingness to renounce dual citizenship. Under AG ¶11(c), an individual's exercise of the rights, privileges, or obligations of foreign citizenship might be mitigated if it occurred before becoming a U.S. citizen or when the individual was a minor. Under AG ¶11(d), an individual's use of a foreign passport might be mitigated if it were approved by his

cognizant security authority. Under AG ¶ 11(e), an individual's use of a foreign passport might be mitigated if he presented credible evidence that the passport had been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant asserted at his hearing that he had voided his expired Nigerian passports, and he provided credible evidence to corroborate his assertion. Thus, AG ¶ 11(e) applies in mitigation.

Applicant denied current Nigerian citizenship, but he failed to provide credible evidence to sustain a conclusion that he had expressed a willingness to renounce dual citizenship. Applicant also denied he exercised dual citizenship with Nigeria by acquiring and using a Nigerian passport after becoming a U.S. citizen. Because he feared that terrorists might target him if he used his U.S. passport to travel to Nigeria, he acquired and used a Nigerian passport to protect himself and to mislead others about his U.S. nationality. He denied that, when he ran for political office in Nigeria after becoming a U.S. citizen, he showed a preference for Nigeria over the U.S. He asserted that his oath of allegiance to the U.S. nullified any potentially disqualifying conduct that demonstrated a preference for Nigeria over the U.S. I conclude that Applicant's assertions were not credible and that AG ¶¶ 11(a), 11(b), 11(c), and 11(d) are inapplicable in mitigation.

Guideline B, Foreign Influence

Under Guideline B, Foreign Influence, “[f]oreign 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.” AG ¶6.

Additionally, adjudications under Guideline B “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 U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.” AG ¶6.

I have considered all of the disqualifying conditions under the Foreign Influence guideline. The following facts raise security concerns under disqualifying condition AG ¶ 7(a):⁵

Nigeria is a country in chaos, without the benefit of a stable lawful government, a situation that threatens U.S. security interests. American citizens with immediate family

⁵ AG ¶ 7(a) reads: “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.”

members who are citizens or residents of Nigeria could be vulnerable to coercion, exploitation, or pressure.

Applicant's mother is a citizen and resident of Nigeria. She is 80 years old and suffering from cancer. Applicant is a dutiful son and each month he sends his mother money for her support and medical treatments. In the past, Applicant sent his mother \$100 per month for her support. Recently, he increased his monthly payments to his mother to \$200 per month to help her with medical expenses related to her cancer. Additionally, Applicant is in regular telephone contact with his mother.

Several mitigating conditions under AG ¶ 8 might be applicable to Applicant's case. If "the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.," then AG ¶ 8(a) might apply. If "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," then AG ¶ 8(b) might apply. If "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," then AG ¶ 8(c) might apply.

Applicant's relationship with his mother is filial and based on long-standing family ties of affection and obligation. Applicant is a dutiful son who looks after the welfare of his mother. He is in frequent contact with her, and she relies upon him for her support. Applicant's mother's age, citizenship, and residency in Nigeria create a heightened risk that Applicant could be targeted for exploitation, pressure, or coercion by individuals or groups operating outside of the law in Nigeria. These groups might also threaten U.S. security interests. Applicant failed to provide information to rebut or mitigate these security concerns. I conclude that the mitigating conditions under AG ¶¶ 8(a), 8(b), and 8(c) are inapplicable.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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."

Guideline E, Personal Conduct

Under Guideline E, a personal conduct security concern arises when an applicant displays "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations" because such conduct "can raise questions about an individual's reliability, trustworthiness and ability

to protect classified information.” Additionally, Guideline E takes special note of “any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.” AG ¶ 15.

I have carefully considered all of the potentially disqualifying conditions under Guideline E. I have especially considered AG ¶ 16(b), which reads as follows: “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.”

The SOR alleged that Applicant falsified material facts in a personal security interview with an authorized investigator in August 2006. Specifically, the SOR alleged that Applicant told the investigator that after he became a U.S. citizen in January 1999, and once his Nigerian passport expired in May 2001, he did not renew his Nigerian passport, when, in fact, the record established that Applicant deliberately failed to disclose that he renewed his Nigerian passport after it expired in May 2001. (SOR ¶3.a.) The SOR also alleged that in his interview with the authorized investigator, Applicant asserted that, after he was issued a U.S. passport in January 1999, he used only his U.S. passport for foreign travel, when, in fact, he had used his Nigerian passport instead of his U.S. passport to enter and exit Nigeria during the period beginning July 19, 2002 through September 17, 2002 and the period beginning December 31, 2002 to at least May 21, 2003. (SOR ¶3.b.) Additionally, the SOR alleged that when he was interviewed by the authorized investigator, Applicant omitted material facts about his political activity in Nigeria by stating that the party he represented in national elections was non-political and working for the betterment of the country through education, when in fact it was an actual political party and Applicant ran for a high national office as a representative of that party. (SOR ¶3.c.)

Applicant denied he deliberately falsified his answers to the questions of the authorized investigator. The authorized investigator appeared as a government witness and credibly testified that the report of his interview with Applicant accurately presented what Applicant had told him. Applicant failed to present credible evidence of factual error in the authorized investigator’s report. Applicant’s testimony was not credible. I conclude that AG ¶16(b) applies to the facts of this case and raises a security concern about Applicant’s truthfulness, reliability, trustworthiness, and ability to protect classified information.

I have carefully reviewed the several mitigating conditions under Guideline E, and I conclude that none of them apply to the facts of Applicant’s case.

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 the whole person concept and all the facts and circumstances surrounding this case. Applicant is a mature adult of 50 years of age. He is a college graduate and a CPA. In his professional work, he must meet requirements of honesty and accuracy. In his interview with an authorized investigator, he deliberately provided false or misleading information about whether he renewed his Nigerian passport, his use of his Nigerian passport after becoming a U.S. citizen, and the nature and extent of his political activity in Nigeria. In his answer to the SOR, he provided misleading information when he said he had returned his passports to the Embassy of Nigeria and had officially revoked his Nigerian citizenship. In fact, he had done neither.

As a U.S. citizen, Applicant traveled to Nigeria in 2002 and 2003. He used his Nigerian passport to enter and leave Nigeria. Once in Nigeria, he joined a political movement which became a political party. He undertook actions which gave primacy to his Nigerian citizenship over his U.S. citizenship. While he attempted to minimize his political activity in Nigeria, the facts established that he ran for public office as a member and representative of a Nigerian political party, thus exposing himself to the possibility of exploitation, pressure, or exploitation by a foreign group or government. This conduct raised serious security concerns.

While Applicant provided credible evidence to corroborate his assertions that he had voided his expired Nigerian passport and was not in possession of a current foreign passport, he failed to demonstrate that he was reliable, trustworthy, and capable of protecting classified information. His general lack of candor made it difficult to rely on the veracity of his statements.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Adjudicative Guidelines C, B, and E.

Formal Findings

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

Paragraph 1, Guideline C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant
Subparagraph 3.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge