



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



## **Appearances**

For Government: Karen Moreno-Sayles, Esq.  
For Applicant: *Pro se*

02/18/2025

## Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence), F (Financial Considerations), and E (Personal Conduct). Security concerns under Guidelines B and F are mitigated, but security concerns under Guideline E are not mitigated. Clearance is denied.

## **Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 2017, 2022. On March 26, 2024, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines B, F, and E. The DCSA acted under Executive Order 12968, *Access to Classified Information*, dated August 2, 1995; DOD Manual 5200.02, *Procedures for the DoD Personnel Security Program (PSP)*, dated April 3, 2017 (Manual); and Security Executive Agent Directive 4, dated December 10, 2016 (SEAD 4).

Applicant answered the SOR in an undated document. He admitted the allegations in SOR ¶¶ 1.a-1.d and 2.a-2.d, denied the allegations in SOR ¶¶ 3.a-3.f, and requested a hearing. His admissions are incorporated in my findings of fact. At the hearing,

Department Counsel moved to withdraw SOR ¶¶ 2.c and 2.d, and I granted the motion. (Tr. 8-9)

Department Counsel was ready to proceed on May 21, 2024, and the case was assigned to me on December 5, 2024. On December 17, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on January 14, 2025. I convened the hearing as scheduled. Government Exhibits 1 through 4 were admitted in evidence without objection. I granted Department Counsel's request to take administrative notice of the relevant facts about Nigeria. (GX 5; Tr. 15) Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. DOHA received the transcript on January 28, 2025.

### **Findings of Fact**

Applicant is a 42-year-old senior solutions consultant employed by a defense contractor since September 2021. He is a native of Nigeria. He obtained a bachelor's degree from a university in Nigeria. He came to the United States in September 2007 and became a U.S. citizen in January 2013. He lives with his mother and a brother. His mother came to the United States in 2016 and his brother came in 2018. They are both permanent residents of the United States. Applicant purchased a home in the United States in 2018 and bought his current home in 2018. (Tr. 26)

Applicant worked for non-federal employers from January 2013 until he was hired for his current position. He married in April 2024. (Tr. 27) He has no children. He has never held a security clearance.

When Applicant submitted his SCA, he answered "No" to the question whether he had ever held dual or multiple citizenships. However, he disclosed that he held a Nigerian passport issued in April 2018 and that he had traveled to Nigeria using his Nigerian passport. (GX 1 at 7).

In Applicant's listing of relatives in his SCA, he listed his mother and one brother who live with him in the United States, but he did not list two other brothers and a sister who are citizens and residents of Nigeria. (GX 1 at 19-23) In a security interview in October 2022, he admitted that he has two brothers and a sister who are citizens and residents of Nigeria.

In about 2008, Applicant's uncle (his father's younger brother), who lives in Nigeria, asked Applicant to purchase a car for him. Applicant purchased a car through Craig's List and shipped it from the United States to his uncle. After this transaction, Applicant's family and friends of the family began asking him to buy cars in the United States for them, because cars were too expensive in Nigeria. Applicant bought used cars for them and shipped them to Nigeria, where his brother delivered the cars and recouped the purchase price.

SOR ¶ 1.a alleges that Applicant owns a company operated in the United States and Nigeria that has conducted more than \$1,000,000 in transactions since 2008 or 2009. In Applicant's employment history in his SCA, he did not disclose that he owned and operated a vehicle export business. (GX 1 at 11-15) In about 2009, Applicant began purchasing cars and exporting them to Nigeria as a part-time business activity. He registered as a business, obtained a license so that he could attend auctions, and began shipping cars to Nigeria. He obtained a business license in the town where he lived, describing it as an auto export business. His business license reflected that he was a sole proprietor rather than a corporation or licensed limited corporation (LLC). (GX 3 at 57)

Applicant tried to make a profit of \$200 or \$300 per car, but some of his profit was used up to repair the cars before shipping them. Potential buyers in Nigeria would give Nigerian money to Applicant's brother, who would hold it until Applicant visited him in Nigeria, or he would convert it to U.S. currency and send it to Applicant. During a security interview in October 2022, Applicant estimated that he purchased and shipped more than 30 vehicles, ranging in price from \$1,000 to \$20,000. (GX 2 at 3) During a second security interview in March 2023, he estimated that he purchased more than 100 cars. (GX 3 at 3) All his transactions were by telephone and text messages, and he did not keep any business records. (GX 3 at 7)

At the hearing, Applicant testified that since he started working for his current employer, he has purchased and shipped less than five cars. He last purchased a car for shipment to Nigeria in 2024. (Tr. 42, 46) In a security interview in October 2022, he told the investigator that he did not disclose his part-time car export business in his SCA because he purchased and exported cars to help people, and he did not consider it a job. (GX 2 at 3)

SOR ¶¶ 2.a and 2.b allege that Applicant failed to file, "as required," federal and state income tax returns for his business for tax years 2009 through 2023. Applicant submitted copies of federal income tax returns for tax years 2011 through 2014 and 2016 through 2021. These returns reflect his wages as a non-federal employee, but they do not reflect any income from his auto export business. (GX 3 at 24-56) In his interview with a security investigator in October 2022, He also told the investigator that he did not file federal or state income tax returns for his business because his tax accountant advised him that he was not required to declare his income from the business because the cars were being shipped outside the United States. (GX 3 at 7)

The SOR alleges that Applicant falsified several sections of his SCA. SOR ¶ 3.a alleges that, when he submitted his SCA, he answered "No" to a question asking if he currently or previously held dual or multiple citizenships. In his answer to the SOR, he denied deliberate falsification. He stated that it was an "honest mistake. His Nigerian passport was about to expire, and he did not intend to renew it.

SOR ¶ 3.b alleges that Applicant did not disclose his self-employment in his SCA. He denied deliberate falsification, explaining that his business was never intended as a source of personal income. He claimed that it was not a "job," but was only a platform for obtaining and shipping vehicles to his siblings.

SOR ¶¶ 3.c, 3.d, and 3.e allege that Applicant did not disclose his close and continuing contacts with foreign nationals, did not disclose his financial support of foreign nationals, and did not disclose his business venture with a foreign national. He admitted that he sent money to his siblings in Nigeria and operated his business through his brother. He explained that he did not disclose these facts because he did not consider biological family members as “foreign nationals”. (Tr. 58-59)

SOR ¶ 3.f alleges that Applicant “exhibited poor judgment” by accepting approximately \$200,000 from “an individual about whom [he] had no identifying, biographical, or background information and no information regarding the source of funds and how he was repaid.” Applicant denied this allegation. During a security interview in April 2023, he stated that he took this sum of money from an individual whose last name he did not know, that he thought the person was involved in information technology, and that he thought the individual obtained the money from an unidentified third person who had a currency exchange business. He told the investigator that he did not know whether the currency exchange business was in the United States or Nigeria. However, when Applicant responded to the SOR, he stated that he knows the individual well, knows that he has a reputation for being responsible and trustworthy, and that the funds were exchanged through a registered agent, licensed and certified to handle financial transactions in Nigeria.

I have taken administrative notice that the Federal Republic of Nigeria has struggled to develop effective systems to address corruption, poverty, and social service delivery, leading to widespread and longstanding public distrust of government. Nigeria also has experienced growing insecurity due to terrorism, inter-communal conflicts, criminal banditry and kidnapping, and maritime piracy. Nigerian criminal enterprises operate in more than 80 countries, including the United States. They engage in drug trafficking and financial fraud, including internet-enabled crimes and scams. They commonly use “money mules” to launder proceeds of criminal activities. The State Department has issued a Level 3 travel advisory (Reconsider Travel) for Nigeria.

## Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense

decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication 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 establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019). It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan* at 531.

## Analysis

### **Guideline B, Foreign Influence**

The security concern under this guideline is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual maybe manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The following disqualifying conditions under this guideline are potentially relevant:

AG ¶ 7(a): contact, regardless of method, 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;

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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;

AG ¶ 7(c): failure to report or fully disclose, when required, association with a foreign person, group, government, or country; and

AG ¶ 7(f): substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest;

The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. See, e.g., ISCR Case No. 12-05839 at 4 (App. Bd. Jul. 11, 2013). It is not a high standard. See, e.g., ISCR Case No. 17-03026 at 5 (App. Bd. Jan. 16, 2019). It is a level of risk one step above a State Department Level 1 travel advisory (“exercise normal precaution”) and equivalent to the Level 2 advisory (“exercise increased caution”). The State Department has issued a Level 3 advisory for Nigeria.

AG ¶¶ 7(a) and 7(b) are established. Applicant's contacts with his uncle and an unknown businessman who appeared to be involved in the currency exchange business created the heightened risk and a potential conflict of interest. AG ¶ 7(c) is established by Applicant's failure to disclose his foreign business interests when he submitted his SCA. AG ¶ 7(f) is established for Applicant's car export business. Although he operated the business from the United States, his customers were all in Nigeria, and his brother who lives in Nigeria collected and held large sums of money generated by the business.

The following mitigating conditions are potentially applicable:

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 interests of the United States;

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

AG ¶ 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.

AG ¶ 8(a) is not established. Applicant has a close personal and business relationship with his brother, and they are engaged in a financial enterprise vulnerable to influence by individuals involved in criminal activity.

AG ¶ 8(b) is established. Applicant has resided in the United States with his mother and brother for many years. He has been a U.S. citizen since January 2013. He owns his home in the United States. His professional career is centered in the United States. He has no interest in returning to live in Nigeria.

AG ¶ 8(f) is established. Although Applicant's business was booming for several years and involved large sums of money, he has purchased and shipped less than five cars since he began working for his current employer. He sold his last car in 2024. His export business has declined to the point whether it is no longer likely to result in a conflict of interest or make him vulnerable to influence or pressure.

## **Guideline F, Financial Considerations**

The security concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

SOR ¶¶ 2.a and 2.b allege that Applicant failed to file, 'as required,' federal as state income tax returns "associated with his business" for tax years 2009 through 2023.

The following disqualifying condition under this guideline is relevant:

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The evidence reflects that Applicant was the sole proprietor of his business. There is no evidence that his company was a corporation or limited liability corporation. Thus, there was no requirement that he file separate federal and state tax returns for his business. Instead, he was only required to report his income from the business on his individual tax return.<sup>1</sup> Thus, I conclude that AG ¶ 19(f) is not established. No other disqualifying conditions under this guideline are established.

## **Guideline E, Personal Conduct**

The security concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

The following disqualifying conditions under this guideline are relevant:

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<sup>1</sup> [www.irs.gov/businesses/small-businesses-self-employed/sole-proprietorships](http://www.irs.gov/businesses/small-businesses-self-employed/sole-proprietorships).

AG ¶16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. . . .

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

AG ¶ 16(a) is established. Applicant's explanation for not disclosing his dual citizenship due to an "honest mistake" is not credible. His explanation for not disclosing his self-employment is not credible. He registered his business with the local government, engaged in numerous financial transactions, and hoped to earn a small profit on each car that he purchased and exported. On the other hand, I found his explanation for not disclosing "foreign" contacts credible, based on his lack of previous experience with completing an SCA and his cultural background that led him to believe that a family member is not a "foreign national."

AG ¶ 16(d) is established. Applicant obtained large loans through a dealer in Nigeria, a country where money-laundering is rampant. In his security interview, he claimed to know very little about the person who arranged the loans, but in his answer to the SOR, he declared that he knew the lender and was familiar with his reputation. He has not rebutted the allegation that he exercised bad judgment. His bad judgment made him vulnerable to exploitation or duress.

The following mitigating conditions are potentially applicable:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances

that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

AG ¶ 17(g): association with persons involved in criminal activities was unwitting, has ceased; or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

AG ¶ 17(a) is not established. Applicant did not disclose his falsifications of his SCA until he was confronted with the evidence by a security investigator.

AG ¶ 17(c) is not established. Applicant's falsification of his SCA in August 2022 was recent and was not "minor." Falsification of an SCA undermines the integrity of the security clearance process.

AG ¶ 17(e) is established for Applicant's export business. Applicant has greatly reduced his business of buying and exporting cars to Nigeria.

AG ¶ 17(g) is established. Applicant's contacts with a potential money-laundering business were unwitting and due to his financial naivete, and they are not likely to recur.

## **Whole-Person Analysis**

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an appellant's security eligibility by considering the totality of the appellant's conduct and all the relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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) the 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.

I have incorporated my comments under Guidelines B, F, and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under those Guidelines, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his foreign family connections, but he has not mitigated the

security concerns raised by his falsification of his SCA and his bad judgment in conducting large financial transactions with a person of unknown reliability in a country rife with criminal activity and money laundering.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline F (Financial Considerations):	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant
Paragraph 3, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 3.a and 3.b:	Against Applicant
Subparagraphs 3.c-3.e:	For Applicant
Subparagraph 3.f:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge