DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 18-00895
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

06/03/2019

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Decision

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GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence) and E (Personal Conduct). Applicant has family members and friends who are citizens and residents of Taiwan and friends who are citizens and residents of China. Also, his past personal conduct, including falsifications on a security clearance application, raises unmitigated security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 6, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guidelines B and E. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant responded to the SOR on August 17, 2018. He requested a hearing before an administrative judge. The case was originally assigned to another judge and then was reassigned to me on December 12, 2018. On the same day, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing (NOH) scheduling the hearing to be conducted via video teleconference on January 10, 2019. Applicant acknowledged receipt of the NOH the next day. I convened the hearing as scheduled.

Department Counsel offered two documents into evidence, which were marked as Government Exhibits (GE) 1 and 2. These exhibits were admitted into evidence without objection. She also offered the Government's request for administrative notice regarding the Republic of China, also known as Taiwan. I marked the Government's request as Hearing Exhibit (HE) I. Department Counsel provided a copy of her letter to Applicant, dated December 7, 2018, with which she enclosed copies of GE 1 and 2 and HE 1. I marked Department Counsel's "Discovery Letter" as HE II. At the hearing, Applicant was uncertain whether he had received HE I. I gave him until January 17, 2019, to determine if he had received the Government's request for administrative notice prior to the hearing and to review it and raise any objections he may have. He made no further response, as noted by Department Counsel in an email addressed to me and Applicant, dated January 24, 2019, which I marked as HE III.[1] On May 30, 2019, I wrote to Department Counsel to confirm again that she had not received a post-hearing submission from Applicant after the January 10, 2019 hearing, which she did the same day. I marked this correspondence as HE V. I conclude that Applicant had ample notice and opportunity to review HE I and to raise any objections. Accordingly, I also conclude he waived any objections to the Government's request for administrative notice.

Applicant testified at the hearing, but offered no documentary evidence, and though I gave him the opportunity to present documentary evidence or to supplement the record evidence after the hearing, he failed to do so. DOHA received the transcript of the hearing (Tr.) on January 25, 2019.

Request for Administrative Notice

As noted, Department Counsel requested that I take administrative notice of certain facts about Taiwan. (HE 1) The facts administratively noticed are summarized in the Findings of Fact, below.

[1] In the Discovery Letter (HE II), Applicant was advised as follows: "**Bring the enclosed documents, the Statement of Reasons, and your response to the Statement of Reasons to the hearing.**" (Emphasis in the original.) He was also advised in a December 12, 2018 email from a member of DOHA's staff as follows: IMPORTANT: You should have received an EVIDENTIARY PACKAGE from the Department Counsel by now. On the day of your hearing, please bring the EVIDENTIARY PACKAGE with the attached government exhibits, and THREE copies of other documents you plan on submitting to the court." (Emphasis in original.) As noted above, Applicant responded to this email on December 13, 2018, and acknowledged receipt. I have marked the December 12 and 13, 2018 communications as HE IV. Applicant failed to comply with the advisories in both communications, which he had acknowledged as having received.

Findings of Fact[2]

Applicant is a 37-year-old software engineer. Since August 2014, he has worked for his security clearance sponsor, a major defense contractor. He worked for the same company as a software intern in 2013 to 2014 while pursuing his undergraduate degree. He submitted his application for a clearance (SCA) on March 24, 2015. The SCA is his first application for a security clearance. His background interview occurred on July 6, 2017.[3]

Applicant was born in Taiwan and immigrated to the United States with his parents in March 1996 at the age of 14. He became a naturalized U.S. citizen in October 2001, when he was 19 years old. He earned a high school diploma in 2000. Ten years later, he began studying for an associate's degree and then a bachelor's degree at U.S. educational institutions. He received his associate's degree in June 2011 and his bachelor's in June 2014, when he was 32 years old. He is presently pursuing a master's degree in engineering at an elite U.S. university. (Tr. 6-7, 25, and 29.)

Applicant's mother is a dual U.S. and Taiwan citizen. She resides in the United States and returns to Taiwan for medical treatment once or twice a year for a total of about two or three weeks. She is mentally and physically disabled. She worked in a restaurant in the United States from 2000 to 2006 until she became disabled. She owns rental properties and supports herself on the rental income produced by the properties. Applicant talks with his mother a few times a year. Prior to 1996, Applicant's mother was a housewife in Taiwan. Applicant has limited contact with his mother. (Tr. 22-28.)

Applicant's father and mother are divorced. After relocating to the United States in 1996 with Applicant and his mother, his father moved back to Taiwan because he did not like living in the United States. During the period 1997 to 2000, his father visited Applicant and his mother about two to three weeks each year. Applicant testified that his father was a helicopter pilot in Taiwan providing disaster relief and that he is now elderly and retired. Applicant assumes without knowing for sure that his father worked for a Taiwanese government agency.[4] In his background interview, Applicant described his father's occupation as "a retired policeman." (Tr. 28-41; GE 2 at 7.)

After 2000, Applicant had a more distant relationship with his father, who subsequently divorced Applicant's mother and remarried a woman in Taiwan. Applicant

[2] Applicant's personal information is extracted from his security clearance application, dated March 24, 2015, (GE 1), unless otherwise indicated by a parenthetical citation to the record.

[3] The record does not reveal the reason for the delay of more than two years between the submission of the SCA and his interview. Applicant confirmed the accuracy of the investigator's report of the interview in response to DOHA's interrogatories, dated May 21, 2018. (GE 2 at 11.)

[4] Applicant was given the opportunity to confirm his assumption or otherwise change his testimony by January 17, 2019. (Tr. 31-32.) As noted above, he failed to provide any further information after the conclusion of the hearing.

testified, however, that his father did provide financial support for Applicant while he was attending college. They had frequent contact during that period. He testified that since he graduated in 2014, Applicant only exchanges text messages with his father on holidays. He last spoke with his father in February 2018 when Applicant's wife had a baby. Applicant testified that because his father was elderly, his father does not communicate by phone often. In his 2015 SCA, however, he wrote that he spoke with his father by phone on a weekly basis. In his July 2017 background interview, he stated that he had monthly contacts with his father by phone and last saw him in May 2017 when Applicant visited Taiwan. His father also had two children from his first marriage. They are citizens and residents of Taiwan. Applicant has no contact with his half-brother and half-sister. (Tr. 28-41; GE 2 at 7.)

Applicant married a Taiwanese woman in January 2011, and the couple divorced in January 2012. In his background interview, he reported that he sponsored this woman for legal residency in the United States and that he believes they were introduced so that he would marry her, which would permit her to remain in the United States legally because she only had a "visa," presumably a tourist visa. On his March 2015 SCA, he failed to disclose his sponsorship of his first wife in response to a question about any sponsorship of a foreign national in Section 20B of the SCA. He testified that this omission was due to his misunderstanding of the "definition of sponsor." According to his SCA, he moved out of a residence in July 2011 that he had owned and lived in since May 2010. For unexplained reasons, he transferred this residence to his wife as part of their divorce after only one year of marriage, and, it appears, after only cohabiting with her as a married couple from January 2011 to July 2011. They had no children. (GE 2 at 6; Tr. 42, 45-48, and 50.)

According to his March 2015 SCA, Applicant lived in rental properties from July 2011 until 2015. He testified at the hearing that he purchased a condominium sometime in 2015 and that this is his current residence. In his background interview, he reported that he purchased this residence in June 2015, which was shortly after the date of the SCA, and that he rented a room to a Chinese student attending a U.S. university from June 2015 until late 2017 or early 2018. The roommate moved out of Applicant's residence when Applicant's second wife was about to deliver their child. The SOR alleges this foreign contact as a security concern under Guideline B in ¶ 1.d and alleges under Guideline E in ¶ 2.d Applicant's failure to disclose his contact with this person in his SCA. The record is undeveloped whether Applicant knew this person when he submitted his SCA in March 2015 and whether he kept in contact with him after he moved out. (GE 2 at 6; Tr. 42, 45-48, and 50.)

Although the record is not completely clear, Applicant's new wife appears to be the woman he described as his "girlfriend" in his July 2017 background interview. According to his January 2019 testimony, they met in late 2016 or early 2017 and have "been married for about two years or so," *i.e.*, in early 2017. If accurate, they were married prior to his interview and Applicant did not disclose his remarriage. The couple had a child in February 2018, six or seven months after the interview. In his interview, he described his

"girlfriend" as a Chinese citizen, who worked as a civil engineer in the United States and was a legal resident.[5] (GE 2 at 6; Tr. 42, 45-50.)

In his July 2017 background interview, Applicant reported that he maintained contact with a former girlfriend, who is a citizen and resident of Taiwan. They broke up in April 2017, but continued their friendship and "video chatting." He reported that they started dating in 2015. At the hearing, he testified that they started dating about three and one-half years prior to the hearing date, which would be after the date of his March 2015 SCA. He then testified confusingly that he did not "have a good reason for" omitting this foreign contact in his SCA. He speculated that the relationship "must just have slipped [his] mind." In his background interview, he only mentioned one former girlfriend from a foreign country with whom he had a relationship between 2015 and April 2017. He also testified, however, that he began dating this ex-girlfriend in late 2013 and the relationship ended in November 2014. The timing suggests that either he was confused or there were two former girlfriends, one from 2013 to 2014 and a second from 2015 to 2017. In either event, he omitted at least one ex-girlfriend as a foreign contact in his SCA. (Tr. 42-43 and 49; GE 2 at 7.)

In his July 2017 background interview, Applicant listed 11 other foreign contacts with whom he had or continues to have close and/or continuing contact, but did not report on his SCA. He testified that he misunderstood the question. These contacts are all Taiwanese and Chinese citizens. Some reside in their home country and some reside in the United States. He also reported multiple trips to Taiwan (June 2014, May 2015, and May 2017) and China (June 2014, June 2016, August 2016, and July 2017). In his March 2015 SCA, he reported travel to Taiwan in 2012, but failed to disclose his June 2014 trip to Taiwan and China. At the hearing, he offered no explanation for his repeated trips to Taiwan and China during the 2012 to 2017 period, although, as noted above, he did report in his interview that he visited his father in Taiwan in May 2017. (GE 2 at 7-8.)

In his background interview, Applicant reported that he has twice been offered jobs to work at the Central Intelligence Agency, but turned down these offers in favor of other jobs. He reported further that he had a pending application with that agency at the time of the interview. (GE 2 at 7-8.)

Applicant worked in the banking industry before he began his undergraduate studies in 2010. From 2005 to 2008, he worked at a bank as a "Personal Banker," as opposed to a teller. At that bank, he concentrated his efforts in the areas of home equity lines of credit, business loans, and mortgage lending. He testified that he was not involved

[5] Subparagraph 1.e of the SOR alleges that Applicant has several close friends who are citizens and residents of Taiwan or China. Subparagraph 2.d alleges that he falsified information in response to Section 19 of his SCA by not disclosing these Taiwanese or Chinese friends. The SOR did not specifically allege that this woman was a foreign contact of Applicant. In his July 2017 background interview, he reported that he started texting her in May 2016. If that is the month in which he met her, then he would have not been obligated to identify her as a foreign contact in his March 2015 SCA.

with opening new accounts and did not need to do so to meet his requirements.[6] His branch manager had monthly or quarterly quotas to meet for opening of new accounts. As the end of the month or quarter would approach and the manager determined that his branch was not meeting its quota, the manager would encourage his bankers, including Applicant, to open "shell" accounts to increase the branch's numbers. Shell accounts were not real bank accounts and were opened with only a few dollars provided by the banker or the manager, and they were subsequently closed. At the hearing, Applicant admitted opening shell accounts for his family members. He also admitted this conduct was unethical, and when asked why he engaged in this unethical conduct, his response was "because everyone was doing it." (Tr. 53-65; GE 2 at 5.)

In 2008, Applicant's employer fired him. According to his background interview, this happened in November 2008. In his SCA, he wrote that his employment ended in February 2008. Applicant failed to disclose on his SCA that he had been fired. In response to the question in the application regarding his reason for leaving that job, Applicant responded "Moved." (GE 2 at 5.)

In his background interview, he reported that he was not sure what happened and did not believe the bank. He also said that his friends told him it did not matter what he wrote on his "security forms" because he could explain what happened latter. It is not clear from the investigator's report of the interview whether he volunteered that he was fired or was confronted by the interviewer with this fact. He testified, however, that he learned he had been fired from the investigator and tried to get more information from the investigator about his termination. He admitted in his SOR Response that he was in fact fired from that position. (Tr. at 61; GE 2 at 5-6.)

At the hearing, Applicant resisted admitting that he knew he had been fired, claiming he was confused by what happened and was never told why he was fired. He testified that when he was terminated, the employer's representative used the words: "We have to let you go." He testified further that he was told by his employer that his actions were not the bank's "ways." He refused to admit that he lost his job because he opened "shell accounts." He was walked out of the bank that day in 2008, though he testified that he was never told he was fired.[7] (Tr. 53-66.)

At the hearing, Applicant tried to explain the discrepancy between the false statement in his SCA and his testimony by stating that at the time he prepared the SCA, he did not know that he was fired. Applicant testified at length that he was "the top one percent banker" at his bank. He admitted that he did not leave this job voluntarily. He

[6] Tr. 58. In his background interview, he told the investigator that his job at the bank was to open new accounts and loans. (GE 2 at 5.)

[7] Curiously, he told the background investigator a completely different story regarding the reason he was fired. He reported that he was falsely accused of leaving a customer loan document in an empty office on another floor of the bank. He also testified that the alternative questions in Section 13C about quitting after being told that he would be fired or left a job by mutual agreement following charges or allegations of misconduct applied to his situation. (GE 2 at 5; Tr. 64.)

claimed that since he was subsequently hired by another bank, he did not think that there was any reference to being fired in his record. (Tr. 53-66.)

Taiwan

I have taken administrative notice of the following facts regarding Taiwan and China. Taiwan is a multi-party democracy, established as a separate, independent government by refugees from mainland China in 1949. The United States recognized Taiwan as an independent government until January 1979, when it formally recognized the Chinese government as the sole legal government of all of China, including Taiwan. This has been referred to as the U.S. "One-China" policy. Nevertheless, the United States and Taiwan enjoy a positive, unofficial relationship.

Chinese actors are the world's most active perpetrators of economic espionage. China aggressively targets sensitive and protected U.S. technologies and military information, using worldwide intelligence operations, including Chinese intelligence operatives based in Taiwan. The United States faces a serious threat to its national security from Chinese intelligence collection operations. China uses it intelligence services and employs other illicit approaches that violate U.S. laws and export controls to obtain important export-restricted technologies and equipment. China's collection activities include the use of Chinese nationals, such as students and researchers to act as procurement agents or intermediaries.

Taiwan has a strong economy and maintains significant economic contacts with China. For many years, Taiwan has also been an active collector of U.S. economic intelligence and technology, including dual-use technologies that have sensitive military applications. There have been numerous cases involving illegal export or attempted export of sensitive, dual-use technology to Taiwan.

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*, 484 U.S. at 531. "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. *See* 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*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

The SOR sets forth five allegations under Guideline B regarding Applicant's mother, father, a former girlfriend, a roommate, and a number of close friends, all of whom are citizens and in some cases residents of Taiwan or China. The security concern under this guideline is set out in AG ¶ 6, as follows:

> 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 evidence establishes the following disqualifying conditions:

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; and

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.

The Government's evidence has established that Applicant's contacts with his father create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Also, his relationship with his father constitutes a connection to a foreign person that creates a potential conflict of interest between Applicant's obligation to protect classified or sensitive information or technology and Applicant's desire to help his father. AG ¶¶ 7(a) and 7(b) apply. With respect to Applicant's mother, his former girlfriend, his former roommate, and his Taiwanese and Chinese friends, the record evidence does not establish either AG ¶¶ 7(a) or 7(b).

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(c): contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

AG ¶ 8(a) is not established. Applicant's relationship with his father is significant even though Applicant attempted to minimize the closeness of his connection with his father. Applicant's testimony was inconsistent on this point. He also provided inconsistent evidence about his father's occupation before he retired, which raises questions as to whether Applicant was seeking to obscure the truth. He was given an opportunity to clarify whether his father worked for the Taiwanese government, and he never followed up after the hearing.

AG ¶ 8(b) is established. Applicant has lived his entire adult life in the United States. He was educated here and he is presently continuing his education at a U.S. university. He owns his residence in this country, and he and his family live here. Even though he is not presently close to his mother, she lives most of the year in the United States as a dual citizen of the U.S. and Taiwan. He has deep and longstanding relationships and loyalties in the United States.

AG ¶ 8(c) is not established. His father provided financial support to Applicant during his college years (2010-2014). Applicant was in frequent contact with him for years after he graduated, and he visited his father in May 2017. The inconsistencies in Applicant's evidence regarding his relationship with his father and my general concerns about Applicant's credibility on security significant issues, as discussed below in my analysis of the Guideline E issues, undercut the persuasiveness of Applicant's evidence in mitigation under AG ¶ 8(c) with respect to his father.

I conclude that Applicant has not mitigated the security concerns alleged in SOR ¶ 1.b with respect to his father.

Guideline E, Personal Conduct

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

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 condition under Guideline E is potentially applicable:

> 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
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> AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Appellant's admissions and the record evidence support the conclusion that Appellant was terminated by the bank in 2008 and that he acted unethically by opening "shell accounts," as alleged in SOR ¶¶ 2.a and 2.b. The evidence, however, does not sufficiently establish the bank's reason for terminating him, though one could assume that it was related to the shell accounts. Rather than make an assumption, I conclude that the evidence does not establish that Applicant's termination by the bank raises a security concern. I, therefore, conclude that AG ¶ 16(c) is not established with respect to SOR ¶ 2.a. If Applicant was terminated by the bank because he opened shell accounts, then the termination is encompassed by the allegation in SOR ¶ 2.b. I do conclude, however, that Applicant opened shell accounts while working at the bank and that this conduct was unethical. Accordingly, AG ¶ 16(c) is established with respect to SOR ¶ 2.b.

In addition, Applicant's admissions and the record evidence support the conclusion that he deliberately falsified information in his March 2015 SCA with respect to the reason he left his employment with the bank in 2008, his failure to disclose his foreign contacts, and his failure to disclose his sponsorship of his first wife for permanent residency, as alleged in SOR ¶¶ 2.c, 2.d, and 2.e. AG ¶ 16(a) is established with respect to those allegations.

Applicant's testimony is replete with inconsistencies and blatantly false statements. No issue demonstrates this better than Applicant's efforts to make his termination from the bank sound, at best, unfair, or at least, for uncertain reasons. He alternatively denied being fired and admitted he was walked out of the bank for not complying with the "bank's ways." I found his testimony on every security-significant issue to lack candor. Applicant's demeanor, as well as his style of speaking, was that of someone trying to sell a false story. He would provide lengthy responses to simple questions rather than just admit the truth. I could give credit to little of his testimony as being truthful.

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(b): the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and
>
> 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.

None of these mitigating conditions apply. Applicant testified that he did not know he had been fired from the bank until the background investigator told him so. That testimony bars a possible conclusion that he volunteered this information at his interview. In his SOR Response, he denied opening shell accounts when he worked at the bank, though he eventually admitted at the hearing that he did so using the excuse that everyone did it. He falsely claimed that he did not understand the questions in the SCA that required him to disclose information that he had to know was of potential security significance regarding his close foreign contacts and his sponsorship of his first wife for permanent residency in the United States. On the sponsorship falsification, he claimed unconvincingly at the hearing that at the time he submitted his SCA, he did not know the meaning of the word "sponsor." Under the facts presented by Applicant, AG ¶ 17(a) is not established.

AG ¶ 17(b) is not established with respect his falsification about his termination by the bank by Applicant's statement to the investigator that his friends told him that it did not matter what he wrote on his security forms. There is no evidence that his friends were attorneys or persons with professional responsibilities relating to security processes. Moreover, it is unlikely that this statement was true since Applicant did not repeat this excuse at the hearing.

AG ¶ 17(c) is not established because Applicant's misconduct was not minor or infrequent. Even though the bank misconduct that lead to his termination and the opening of shell accounts, if that was not the reason for the termination, occurred a number of years ago, his falsification about his termination in his SCA is recent. Moreover, all of his misconduct is part of a long pattern of unreliable and dishonest behavior, which casts serious doubts about his reliability, trustworthiness, and good judgment.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances and applying the adjudicative factors in AG ¶ 2(d).[8]

I have incorporated my comments under Guidelines B and E in my whole-person analysis. After weighing the disqualifying and mitigating conditions under these guidelines and evaluating all of the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his foreign contact and connection with his father and by his personal conduct.

Formal Findings

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

Paragraph 1. Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c-1.e:	For Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2.e:	Against Applicant

[8] The factors are: (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.

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.

John Bayard Glendon
Administrative Judge