



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 15-03438
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: Christopher Graham, Esq.

12/01/2016

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant mitigated foreign influence security concerns raised by his foreign connections and contacts, principally consisting of foreign relatives residing in Hong Kong. However, he did not mitigate security concerns raised by his marijuana use while holding a security clearance and his dishonesty about his past drug use during the security clearance process. Clearance is denied.

**History of the Case**

On December 22, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his conduct and circumstances raised security concerns under the personal conduct and foreign influence guidelines.<sup>1</sup> Applicant answered the SOR and requested a hearing to establish his eligibility for continued access to classified information.

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<sup>1</sup> This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

On June 8, 2016, a date mutually agreed to by the parties, a hearing was held.<sup>2</sup> Applicant chose to testify, and Exhibits 1 – 9 and A – E were admitted into evidence without objection. Department Counsel submitted a request for administrative notice post-hearing, which was marked Exhibit 10 and admitted into the administrative record over Applicant's objection. Applicant timely submitted a reply to the Government's request for administrative notice, which was marked Exhibit F and admitted into the administrative record without objection. The transcript of the hearing (Tr.) was received on June 16, 2016, and the record closed on July 11, 2016.<sup>3</sup>

### **Findings of Fact**

Applicant was born in the United States. He attended and graduated from top U.S. universities. He earned in succession: a bachelor's degree in physics, a master's degree in applied mathematics, and a Ph.D. in physics. After attaining his doctorate, Applicant was hired by his current employer. He was first granted a security clearance in 2011. (Tr. 12-14; Exhibit F)

#### *Personal Conduct*

Applicant admits he used marijuana in approximately November 2011, shortly after receiving a security clearance. He further admits that he knew his illegal drug use was against his employer's workplace policy and contrary to rules for clearance holders. The same evening that he used marijuana, Applicant was involved in a minor car accident (fender bender) after consuming alcohol. He left the scene of the accident without reporting it. Applicant notes that his consumption of alcohol contributed to his poor decision to use marijuana. Applicant promises not to engage in similar conduct in the future. He has not had a drug screen in the past five years. (Tr. 15-17, 31, 34-37, 58; Answer; Exhibit 1 at 78-79; Exhibit 4; Exhibit 8)

In April 2012, Applicant submitted a security clearance application (SCA) requesting a higher-level clearance to perform contract work for another government agency (AGA). In response to a question asking if he had used any illegal drugs, including marijuana, in the past seven years or while holding a security clearance, Applicant responded "no." (Exhibit 2 at 22, Tr. 37)<sup>4</sup>

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<sup>2</sup> Correspondence with the parties, notice of hearing, and case management order (CMO) were marked and are attached to the record as Appellate Exhibits (App. Exh.) I – III, respectively.

<sup>3</sup> Department Counsel did not provide Exhibit 10 in advance of the hearing due to numerous issues beyond his control. Applicant objected to the admission of Exhibit 10, essentially raising a claim of collateral estoppel. I overruled the objection, and further found that Department Counsel's failure to comply with the CMO and Directive, Enclosure 3, E.3.1.13, was not in bad faith and excused the late disclosure and production of Exhibit 10. (Tr. 6-8, 19-20.) I left the record open to provide Applicant an opportunity to review and submit matters in response to Exhibit 10, as well as provide any additional evidence. As noted, Applicant did submit post-hearing matters, which were admitted as Exhibit F.

<sup>4</sup> Exhibit 2 is of poor quality, but the pertinent questions and responses are legible.

The SOR alleges, in pertinent part, that:

1.d. You falsified material facts on a [SCA], signed on April 25, 2012, in response to Section 12 – Illegal Use of Drugs or Drug Activity “In the last 7 years have you illegally used any controlled substance, for example, cocaine, crack cocaine, THC (marijuana, hashish, etc.), . . .?” You answered “no” and deliberately omitted that you had used marijuana in at least November 2011.<sup>5</sup>

In his Answer, Applicant admitted that he falsified his SCA by deliberately failing to disclose his marijuana use. Specifically, Applicant stated:

1.d. I **admit** this statement fully. At the time of filling this out, I did not fully respect nor weigh the ramifications of my actions on the form. I panicked with regards to the November 2011 incident and wished to ignore it and not have it be a part of my life.<sup>6</sup>

Applicant signed his Answer in January 2015, swearing that it was “true and correct to the best of my knowledge and belief.” (Answer)

At hearing, Applicant backtracked on his sworn admission. He now claims that he negligently responded “no” to the illegal drug use question in his haste to complete the SCA. (Tr. 18-19, 37-38, 46-49, 61-66) Applicant’s hearing testimony is not credible.

After submitting the SCA, Applicant was interviewed on multiple occasions by agents for the AGA. In June 2012, during one of these interviews, Applicant lied about when his marijuana use occurred. He falsely claimed that it occurred in the summer of 2010, before being granted a security clearance and beginning his employment as a federal contractor. He subsequently corrected the misinformation during a polygraph-assisted interview. Applicant admits he “intentionally gave the wrong date” during the June 2012 interview, because he did not want to reveal that his illegal drug use occurred while holding a security clearance. (Tr. 38-45, 61; Exhibit 4 at 3; Exhibit 7 at 2)

During the June 2012 interview, Applicant admitted to purposefully submitting an incorrect income tax return to the IRS. Namely, he listed himself as head of household on his 2011 tax year income tax return and claimed his uncle as a dependent. Applicant explained that his submission of the false income tax return was, in part, caused by improper advice he received from a family member. He has hired a professional tax preparer and has submitted proper tax returns ever since. (Tr. 17-18, 45; Ex. 4 at 3)

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<sup>5</sup> Applicant’s falsification of the subsequent question asking if he had used any illegal drugs while holding a security clearance was not alleged. This additional matter is only being considered in assessing Applicant’s credibility, mitigation case, and whole-person factors.

<sup>6</sup> Answer (emphasis in original).

In November 2012, the AGA denied Applicant's request to upgrade his security clearance. The basis of the AGA's denial was, in part, Applicant's "dishonesty regarding his . . . illegal drug involvement was displayed multiple times through his security processing." (Exhibit 4 at 6, Tr. 41; Exhibit 5)

### *Foreign Influence*

Applicant's wife is originally from Hong Kong. She immigrated to the United States as a child and became a naturalized U.S. citizen. She earned an undergraduate degree from a top-tier U.S. university and works for a large financial services company in the United States. Her parents are naturalized U.S. citizens and reside in the United States. They do not own property in Hong Kong. Applicant listed his now wife and other foreign contacts on his initial SCA. He has freely discussed his foreign relatives and contacts during multiple background interviews over the years.

Applicant has a number of relatives, notably, an aunt, uncle, and two cousins who are residents of Hong Kong and have British passports. These foreign relatives are listed as a security concern on the SOR. At least three of these foreign family members are either permanent residents of the United States or naturalized U.S. citizens. Applicant has infrequent contact with these foreign relatives. He listed them on his SCA, as well as a bank account he previously held while employed as a summer intern at the Hong Kong office of a large U.S.-based financial services company over 10 years ago.

The SOR also lists a "family friend" who is a citizen and resident of China as a security concern. Applicant disclosed this person on a recent SCA and explained that she is a "childhood friend" of his mother. He only has contact with this person when he visits China. The record evidence reflects that he last visited China over four years ago.

Applicant's foreign relatives and other contacts do not have any known connection to any foreign government, military, or intelligence service. Applicant does not discuss his work with these foreign persons. He does not have any foreign assets, property, or business ties. He has received at least one job offer from China, but turned it down as he was not interested in the job "nor living in China." He owns a home in the United States and has other significant ties to the United States. (Tr. 15, 20-31, 49-55, 59-61; Exhibit 1 at 35-44, 73; Exhibit 3 at 19-20, 30; Exhibit 4; Exhibit 9)

In his Answer, Applicant states the following regarding his foreign relatives:

To be clear with regards to this section, with the exception of my wife, I did not even really know the complete status of all my family members listed above until I did a bit more digging about their personal information.

Applicant made a written statement in June 2013, stating, in pertinent part, that:

I have traveled to China and Hong Kong a lot and have people that I care for in these places. I am also very fond and proud of my Chinese heritage

. . . . My loyalties lie with Americans and American government but I do hold a place in my heart for Chinese people and Chinese culture. I have no allegiance to Chinese government. (Exhibit 7 at 3)

Applicant submitted a number of letters from longtime friends, co-workers, supervisors, and a company security official. These reference letters collectively provide a favorable opinion regarding Applicant's character and each of the individuals who submitted a letter supports Applicant's request for a security clearance. Applicant's papers have been published in peer-reviewed publications. He has been promoted by his employer to a managerial position since the November 2011 drug use incident, and received awards for his achievements. He volunteers his time in support of charitable events. (Tr. 57-59; Exhibits A – F)

### **Administrative Notice (Hong Kong and China)**

Administrative notice may be taken of uncontroverted facts regarding a foreign country set forth in reliable and relevant U.S. Government reports. Additionally, the official position of relevant federal agencies or the pertinent statements of key U.S. Government officials may be appropriate for administrative notice. Generally, the party requesting administrative notice must provide the source document, either the full document or relevant portion, to allow an administrative judge to assess the reliability, accuracy, and relevancy of any matter requested for administrative notice.<sup>7</sup> After reviewing Department Counsel's request, to include the source documents cited therein, the following pertinent facts regarding Hong Kong and China are noted:<sup>8</sup>

From 1842 to June 30, 1997, Hong Kong was a British colony. Those born in Hong Kong during this time were considered British subjects. On July 1, 1997, Hong Kong reverted to Chinese sovereignty as a Special Administrative Region (SAR) of the People's Republic of China (China or PRC). As an SAR, Hong Kong maintains some autonomy from the PRC, which the United States supports under the "one country, two systems" framework. However, the PRC maintains authority on foreign relations and national defense. The PRC has an authoritarian government, dominated by the Chinese Communist Party. The PRC has a poor record with respect to human rights, suppresses political dissent, and its practices include arbitrary arrest and detention, forced

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<sup>7</sup> See ISCR Case No. 08-09480 (App. Bd. Mar. 17, 2010); ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007). See also, Directive, Enclosure 3, ¶ E3.1.19 (the Federal Rules of Evidence (F.R.E.) shall serve as a guide in DOHA proceedings and technical rules of evidence may be relaxed to permit the development of a full and complete record); F.R.E. 201; F.R.E. 1006.

<sup>8</sup> Applicant objected to certain portions of the Government's administrative notice request, namely, Justice Department press releases regarding "actual or attempted espionage and/or illegal export of sensitive technology to China." Exhibit 10 at 6-7, 11-12. Applicant concedes that "[t]he press releases were presented apparently to substantiate that the PRC actively pursues collection of U.S. economic and proprietary information, and, therefore, Applicant's relationships with his family members and extended family members in the PRC" raise a security concern. Exhibit F at 1. Applicant's objection is overruled. However, I have afforded these matters the appropriate weight in light of official U.S. government reports "describing in broader terms the political and intelligence profile, or the human rights record, of [the PRC]" that were admitted into the record. ISCR Case No. 04-11571 at 3 (App. Bd. Feb. 8, 2007).

confessions, torture, and mistreatment of prisoners. The PRC actively engages in acts of espionage against the United States. The U.S. State Department warns visitors to China that they may be placed under surveillance. Hotel rooms, offices, cars, taxis, internet usage, and fax machines may be monitored onsite or remotely, and personal possessions in hotel rooms, including computers, may be searched.

## **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative judges are responsible for ensuring that an applicant receives fair notice of the security concerns at issue, has a reasonable opportunity to address those concerns, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

An individual who is granted access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Security clearance decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

## Analysis

### Guideline E, Personal Conduct

The personal conduct security concern is explained at 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes several disqualifying conditions that could raise a security concern, and the following were raised by the evidence:

AG ¶ 16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to conduct investigations . . . determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

AG ¶ 16(b): deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that . . . 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 person may not properly safeguard protected information; and

AG ¶ 16(f): violation of a written or recorded commitment made by the individual to the employer as a condition of employment.

### *Falsifications*

The SOR alleges at 1.a and 1.d that Applicant provided false and misleading information on his 2012 SCA and during an interview by an AGA agent regarding his past illegal drug use. The security clearance process is contingent upon the honesty of all applicants. It begins with the answers provided in the SCA and continues throughout the security clearance process. The omission of material, adverse information standing alone is not enough to establish that an applicant intentionally falsified his or her SCA. An omission is not deliberate if the person genuinely forgot the information requested, inadvertently overlooked or misunderstood the question, or sincerely thought the

information did not need to be reported. An administrative judge must examine the facts and circumstances surrounding the omission to determine an applicant's true intent.<sup>9</sup>

Applicant falsified his SCA when he deliberately omitted the negative information about his November 2011 marijuana use. I did not find his hearing testimony, in which he claimed that his failure to reveal the information was a mistake brought on by faulty memory, to be credible. Applicant's marijuana use occurred just five months before he submitted the April 2012 SCA. Additionally, the use occurred under unique circumstances. Notably, Applicant was involved in a car accident earlier in the evening while under the influence of alcohol – an accident he did not report to the authorities or the owner of the other car. Thus, this experience would have been memorable and, even in haste, would not have been something Applicant easily forgot.<sup>10</sup>

Furthermore, even if Applicant had tried to forget or put aside the events of that evening, the very next question on the 2012 SCA should have oriented him to his potential disqualifying conduct. The question specifically asked Applicant whether he had used any illegal drugs, to include marijuana, while holding a security clearance. The security significance of his conduct would not have been lost on Applicant. It was clearly apparent to Applicant just a few months later when he was being interviewed by the AGA and he lied to hide the fact that his drug use occurred while holding a clearance.

After considering all the evidence, to include Applicant's age, education, and the straightforward nature of the question involved, as well as his demeanor at hearing, I find that Applicant deliberately falsified his SCA as alleged in SOR 1.d. I further find that Applicant intentionally provided false and misleading information about his past drug use during his June 2012 AGA interview. Accordingly, the falsification allegations, SOR 1.a and 1.d, were established. AG ¶¶ 16(a) and 16(b) fully apply.

Guideline E lists a number of conditions under AG ¶ 17 that could potentially mitigate the personal conduct security concern. I have considered all the mitigating condition and do not find any apply to Applicant's dishonesty during the security clearance process. Applicant has yet to take full responsibility for his dishonesty. He only revealed the adverse information about his past drug use under the pressure of an impending polygraph examination. He continues to provide false and misleading information about his past drug use. Overall, unresolved doubts about Applicant's honesty and reliability remain.

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<sup>9</sup> See generally ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005).

<sup>10</sup> Tr. at 18-19 (Question: "Why did you answer no on the drug question on the SF-86, or the e-QIP, when they asked about any prior marijuana use?" Answer: "So that was one of these things where in my haste to get the application out I basically was using a lot of the same answers that I had when I was applying from the previous secret clearance. I -- you know, in my mind, that one night was so something that I was -- not something that stuck with me and I did not have it active in my mind. Upon filling out the form, I neglected to put it on.")



### *Illegal drug use while holding a clearance and other past questionable conduct*

The SOR alleges at 1.b and 1.c Applicant's car accident while under the influence of alcohol in November 2011 and submission of a false federal income tax return in approximately April 2012. Both allegations are established through Applicant's admissions and the evidence admitted at hearing. AG ¶ 16(c) applies to these allegations. This conduct is mitigated by the passage of time. AG ¶ 17(c).

On the other hand, Applicant failed to meet his heavy burden of proof and persuasion to mitigate the serious security concerns raised by his past use of marijuana while holding a security clearance. Although the drug use occurred some five years ago, Applicant's dishonesty about his past drug use during the 2012 security clearance process, coupled with his implausible hearing testimony, undercut the mitigating value of the passage of time and other favorable record evidence. Specifically, I find that AG ¶¶ 16(c) and 16(e) apply and, although AG ¶ 17(c) has some applicability, it is insufficient to mitigate the security concerns raised by Applicant's past illegal drug use while holding a security clearance.<sup>11</sup>

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

The foreign influence security concern is explained at AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest.

A person is not automatically disqualified from holding a security clearance because s/he has connections and contacts in a foreign country. Instead, in assessing a person's vulnerability to foreign influence, an administrative judge must take into account the foreign government involved; the intelligence-gathering history of that government; the country's human rights record; and other pertinent factors.<sup>12</sup> A person with connections and contacts in a foreign country, such as China, faces a very heavy burden of persuasion due to the significant security concerns raised by such circumstances. See ISCR Case No. 06-24575 at 4 (App. Bd. Nov. 9, 2007).

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<sup>11</sup> ISCR Case No. 14-03522 (App. Bd. Feb. 24, 2016) (three decades of holding a security clearance without issue did not mitigate concerns raised by five-year old marijuana use for the treatment of a serious medical condition); ISCR Case No. 14-02203 (App. Bd. Mar. 30, 2015) (passage of five years since applicant last used marijuana did not mitigate concerns raised by use while holding a clearance); ISCR Case No. 14-01551 (App. Bd. Dec. 15, 2014) (denial sustained where applicant's puff from a marijuana cigarette occurred while holding a clearance); ISCR Case No. 13-01281 (App. Bd. Aug. 4, 2014) (personal conduct concerns not mitigated because drug use occurred while holding a clearance).

<sup>12</sup> ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007) (setting forth factors an administrative judge must consider in foreign influence cases).

Based on the record evidence, Applicant's connections to his wife, in-laws, and mother's childhood friend, as alleged in SOR 1.d – 1.f, do not raise a foreign influence security concern. However, Applicant's connections to his relatives living in Hong Kong, coupled with the facts administratively noticed regarding the PRC, raise the foreign influence security concern and the following disqualifying conditions:

AG ¶ 7(a): contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Once disqualifying conditions are established, the burden shifts to Applicant to present evidence demonstrating extenuation or mitigation sufficient to warrant a favorable security clearance decision. ISCR Case No. 15-01208 at 4 (citing Directive ¶ E3.1.15). The adjudicative guidelines set forth a number of potential conditions that may mitigate the foreign influence security concern. I have considered all the applicable mitigating conditions, including the following:

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 U.S.;

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

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; and

AG ¶ 8(e): the individual has promptly complied with existing agency requirements regarding the reporting of contacts . . . from a foreign country.

Applicant's contact with the listed foreign relatives is infrequent. His relationship to these foreign relatives is not strong. In reaching this conclusion I considered Applicant's 2013 affidavit, wherein he declares that he cares for his foreign relatives.<sup>13</sup> I also considered that in responding to the SOR, Applicant admitted that he barely knew his foreign relatives and could not answer even basic biographical information about them without conducting further research. However, in light of the matters accepted for administrative notice, even these relatively weak foreign connections could be a source of foreign influence. Accordingly, AG ¶ 8(a) and 8(c) have only limited applicability.

Applicant disclosed his foreign connections and contacts beginning with his initial SCA in 2012. He fully discussed these connections and contacts over the years with government investigators. However, in light of the matters accepted for administrative notice regarding the PRC's espionage efforts targeting the United States, AG ¶ 8(e) has limited applicability. *Cf.* ISCR Case No. 13-01341 (App. Bd. Nov. 10, 2014).

Applicant was born, raised, and educated in the United States. His immediate family members are U.S. citizens, living in the United States. His entire professional career has been in the employ of a single U.S. Government contractor. He chose this employment over multiple lucrative job offers, including rejecting a job offer from China. Furthermore, in the last several years, he has established his own significant ties to the United States that are separate and apart from his parents and the rest of his immediate family members in the United States. Notably, he is married to a U.S. citizen, holds a managerial position at his job, and owns a home in the United States. He has also established close relationships with coworkers and others in his community. AG ¶ 8(b) fully applies. After weighing the favorable and unfavorable evidence, including the whole-person factors, I find that Applicant mitigated the foreign influence security concern.

## **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the factors listed at AG ¶ 2(a). I hereby incorporate my above analysis and highlight some additional whole-person factors.

I gave due consideration to Applicant's educational and professional accomplishments, volunteer efforts for charitable causes, and favorable character references. However, this and the other favorable record evidence are insufficient to mitigate the security concerns raised by his conduct, notably, his use of an illegal drug while holding a clearance and his dishonesty about his past drug use during the security clearance process. The Appeal Board has held that such dishonesty "strikes at the

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<sup>13</sup> After reviewing the statement in the context of the entire record, I do not find it is a statement declaring a preference for any foreign country over the United States. Instead, it is a benign statement by a first generation American expressing his affection for his extended family overseas and his heritage.

heart of the security clearance process.”<sup>14</sup> Furthermore, the Directive specifically states that failure to provide truthful responses on an SCA or during security processing “will normally result in an unfavorable clearance action.” AG ¶ 15. Applicant’s favorable evidence is insufficient to mitigate the security concerns raised by his personal conduct. Overall, the record evidence leaves me with doubts about Applicant’s eligibility for continued access to classified information.

### **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 E (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 1.a, 1.d, and 1.e:	Against Applicant
Subparagraphs 1.b and 1.c:	For Applicant
Paragraph 2, Guideline B (Foreign Influence):	FOR Applicant
Subparagraphs 2.a – 2.f:	For Applicant

### **Conclusion**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant’s request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge

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<sup>14</sup> ISCR Case No. 09-01652 at 7 (App. Bd. Aug. 8, 2011).