



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



In the matter of: )  
)  
) ISCR Case No. 15-04224  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: *Pro se*

02/28/2017

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the foreign influence security concern posed by his relatives who are citizens and residents of China, and his bank account in China. Applicant's omission of his Chinese bank account from his 2011 security clearance application constituted a falsification. Applicant failed to mitigate the personal conduct security concern. Clearance is denied.

**Statement of the Case**

On February 12, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) detailing a security concern under Guideline B, foreign influence, and Guideline E, personal conduct. The action was taken under Executive Order 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).

Applicant answered the SOR on March 5, 2016, admitting SOR subparagraphs 1.a, 1.b, 1.e, and denying the remaining SOR subparagraphs. He requested a hearing, and on August 11, 2016, I received the case assignment. The Department of Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 20, 2016, scheduling it for December 7, 2016. During the hearing, I received two Government exhibits (GE 1 and GE 2) and the testimony of Applicant. Also, I took administrative notice, at Department Counsel's request, of the facts set forth in seven federal government publications about China, marked as Hearing Exhibits (HE) I through VII. DOHA received the hearing transcript (Tr.) on December 15, 2016.

### **Findings of Fact**

Applicant is a 58-year-old married man with two adult children. He works for a defense contractor as a consultant and a solution architect. He has been working for the same company since 1998. (Tr. 19)

Applicant was born and raised in China. He earned an undergraduate degree in the field of applied mathematics in 1982, and a master's degree in 1985. Both of these degrees were from Chinese institutions. In 1985, he immigrated to the United States on a student visa to pursue a Ph.D in the field of operations research. He completed it in 1991. He then remained in the United States where he has lived ever since, with the exception of three years in Hong Kong in the mid-1990s when Applicant taught at a college there. (Tr. 17, 29-30) He has been a naturalized U.S. citizen since 2000. (GE 1 at 2)

Applicant's parents are deceased. Two of Applicant's brothers are citizens and residents of China. (Tr. 19-20) As of January 2016, one of Applicant's brothers residing in China was a semi-retired building engineer, working part-time, in an advisory capacity, mentoring younger employees. (Tr. 24, 26) Now, he is completely retired.

Applicant's other brother living in China is a retired factory worker. Several years before his retirement, the government closed the factory. (Tr. 26) Although Applicant's brother received unemployment compensation, it was meager. Consequently, Applicant helped him financially, sending him payments between \$300 to \$500 per year to help him make ends meet. (Tr. 26, 39) When Applicant's brother turned 60, he became eligible for retirement benefits. Because these benefits were more generous, he no longer needed Applicant's help. (Tr. 27)

Applicant talks with his brothers approximately three to five times per year. (Tr. 27) Applicant last visited his brothers this past summer. They met in Japan where they spent two weeks, then travelled to China, spending one week there before Applicant returned home. (Tr. 24-25, 40)

Since the date of the SOR, Applicant's parents-in-law have moved to the United States. They live in a senior citizens' facility near Applicant's home. (Tr. 23)

Applicant has a bank account in Hong Kong. (Tr. 30) He opened it in 1996 when he was living there, and used it for direct deposit of his teaching salary while working there. (Tr. 30 GE 2 at 6) It has a balance of \$30,000. (Tr. 30) The money in this account is insignificant in comparison to Applicant's assets in the United States, as he has satisfied his home mortgage, has no car loans, and pays his credit card debts monthly. (GE 2 at 7)

Applicant completed an electronic questionnaire for investigations processing in May 2011. He answered "no" in response to Question 1 of Section 20, "do you have or have you EVER had any foreign financial businesses, foreign bank accounts, or other foreign financial interests of which you have direct control or direct ownership?." Applicant testified that he misunderstood the question, thinking that it only required him to disclose foreign financial interests that were business-related rather than personal. (Tr. 30)

On November 27, 2012, an investigative agent prepared a summary of an interview with Applicant conducted on November 8, 2012. (GE 2) On January 21, 2016, Applicant certified that the interview was accurate. (GE 2 at 14) At the hearing, he did not object to its admissibility. (Tr. 12) Per the report, Applicant did not list the foreign bank account because he did not want anyone to know about it. (GE 2 at 6)

### **Administrative Notice**

China is one of the most active espionage conductors against the United States in the world. (HE I at 2) Chinese government security personnel may at times place foreign visitors under surveillance. (HE VII at 2) China routinely represses its citizens, particularly certain ethnic groups and individuals involved in rights advocacy. (HE VI at 1)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

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

## **Analysis**

### **Guideline E, Personal Conduct**

Under this guideline, “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.” (AG ¶ 15) Moreover, “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.” (*Id.*)

Applicant’s omission of his Hong Kong bank account from his May 2011 security clearance application raises the issue of whether 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” applies. Applicant’s testimony that his omission was a good-faith misunderstanding is contradicted by his explanation to an investigator that he did not want anyone to know about it. Under these circumstances, AG ¶ 16(a) applies without mitigation.

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

Under this guideline, “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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interest” (AG ¶ 6). Moreover, “adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism” (*Id.*).

China is a police state that conducts more espionage against the United States than does nearly any other country in the world. Consequently, Applicant’s two brothers who are both citizens and residents of China trigger the application of 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, or coercion.”

Applicant's parents-in-law no longer live in China. Consequently, they do not generate a security concern. I resolve subparagraph 1.a in his favor. Applicant's bank account in Hong Kong, a province of China, with a balance of approximately \$30,000, triggers the application of AG ¶ 7(e), "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation."

The following mitigating conditions under AG ¶ 8 are potentially applicable:

(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;

(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

(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 and individual.

Applicant has provided financial assistance in the past to one of his brothers living in China when he was in need, and he has visited both brothers in China as recently as last summer. His relationship with them is not casual and infrequent. AG ¶ 8(c) does not apply. There is some record evidence that Applicant's bank account in Hong Kong is minimal in relationship to his assets in the United States. Given the country where the account is located, the amount deposited in the account, and Applicant's rationale for not disclosing the account, expressed to an investigative agent in November 2012, I conclude that the proportion of the account's balance to Applicant's overall net worth, even if minimal, does not trigger the favorable application of AG ¶ 8(f).

Applicant has developed deep and longstanding relationships in the United States, as he has lived here for more than 30 years, working here, raising his children, and satisfying his home mortgage. Given the heavy burden generated by China's status as one of the most active conductors of espionage against the United States in the world, and Applicant's limited credibility, as exemplified by his intentional omission of his Hong Kong bank account from his security clearance, he has not established that he can be expected to resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(a) does not apply. In sum, I conclude that Applicant has failed to mitigate the foreign influence security concerns.

## **Whole-Person Concept**

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) 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 considered the whole-person factors in my evaluation of the disqualifying and mitigating conditions, and conclude that they do not overcome concerns raised by the Government's adverse information about Applicant.

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

## **Conclusion**

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

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MARC E. CURRY  
Administrative Judge