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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Application for Approval
of Tribal Key Employee Finding of Suitability
for:

KOUA XIONG

Applicant

CGCC Case No. CGCC-2022-0811-12C

BGC Case No. BGC-HQ2022-00020SL

DECISION AND ORDER

Hearing Date: June 13, 2023
Time: 9:00 a.m.

This matter was heard by the California Gambling Control Commission (Commission) pursuant to Business and Professions Code sections 19870 and 19871, and title 4, California Code of Regulations (CCR) section 12060, via Zoom video conference, on June 13, 2023.

Applicant Koua Xiong (Xiong) was not represented by counsel during the evidentiary hearing.

Neil Houston, Deputy Attorney General, State of California (DAG Houston), represented complainant Yolanda Morrow, Director of the Bureau of Gambling Control (Bureau), Department of Justice, State of California.

Maivlauj Lee provided interpretation services in Cambodian for Xiong during the evidentiary hearing.

During the evidentiary hearing, Presiding Officer Russell Johnson (PO Johnson), Attorney III of the Commission, took official notice of the following documents: the Commission’s Notice and Agenda of Commission Hearing; the Commission’s Conclusion of Prehearing Conference letter; the Commission’s Notice of Hearing with attachments (A) Xiong’s Application, and (B) the Bureau’s background investigation report; the Bureau’s Statement of Reasons; and Xiong’s signed Notice of Defense form.

During the evidentiary hearing, PO Johnson accepted into evidence Exhibits 1-11, Bates Nos. Complainant 001-155, offered by the Bureau and identified on the Bureau’s Evidentiary Exhibit Index, pursuant to a stipulation between the parties.

1 PO Johnson accepted into evidence Exhibit A, offered by Xiong pursuant to a stipulation
2 between the parties.

3 PO Johnson closed the administrative record and the matter was submitted for decision on
4 June 13, 2023.

5 FINDINGS OF FACT

6 **Procedural History**

7 1. On June 23, 2017, the Bureau received Xiong's initial Application for Finding
8 of Suitability Tribal Key Employee (BGC-TKE-001 (Rev. 03/2015)) and a Tribal Key Employee
9 Supplemental Background Investigation Information (BGC-TBL-001 (Rev. 07/11))
10 (Application). The Application was occasioned by Xiong's promotion from Dealer (a non-key
11 employee position) to Dual Rate Dealer (a key employee position) at Graton Resort & Casino
12 (Graton). Upon receipt of the Application, the Bureau assigned Xiong Record Number TRKE-
13 018625, and undertook a Tribal Key Employee Background Investigation.

14 2. During its background investigation of the Xiong, the Bureau learned that Xiong had
15 failed to disclose certain derogatory employment information, and had misrepresented certain
16 other events in her employment history. The Bureau requested further information from Xiong,
17 and Xiong provided further responses. On March 17, 2022, the Bureau met with the Tribal
18 Gaming Agency (TGA) by telephone and informed it of the Bureau's intention to recommend
19 denial of the Application.

20 3. On March 21, 2022, Xiong advised the Bureau that she had been moved to a non-key
21 employee position, and sought to withdraw the Application. The Bureau forwarded Xiong's
22 request to the Commission, and on May 26, 2022, the Commission denied Xiong's request to
23 withdraw the Application. On May 27, 2022, the Bureau met with Xiong by telephone and
24 informed her of the basis for the Bureau's recommendation to deny the Application. On May 27,
25 2022, the Bureau also issued its Tribal Key Employee Background Investigation Report
26 recommending that the Application be denied.

27 4. On August 12, 2022, the Commission notified Xiong that the Commission had
28 considered the Application at its August 11, 2022 meeting, and had referred the Application to an

1 evidentiary hearing pursuant to CCR title 4, section 12054, subdivision (a)(4).

2 5. On August 28, 2022, Xiong timely filed a Notice of Defense. The Notice of
3 Defense included a request that notices or written communications concerning the evidentiary
4 hearing be provided to Xiong via email.

5 6. On December 13, 2022, the Commission issued a Notice of Hearing informing
6 Xiong that the evidentiary hearing would take place at 9:00 a.m., June 13, 2023, via Zoom
7 teleconference, and that a Prehearing Conference would be held by Zoom teleconference on May
8 2, 2023.

9 7. On May 2, 2023, the noticed Prehearing Conference was held before PO Johnson.
10 Maivlauj Lee provided interpretation services in Cambodian for Xiong during the Prehearing
11 Conference.

12 8. On May 3, 2023, PO Johnson sent a Conclusion of Prehearing Conference letter, via e-
13 mail, to DAG Houston and Xiong.

14 9. The Commission heard this matter via Zoom video conference on June 13, 2023.
15 PO Johnson closed the administrative record on June 13, 2023.

16 **Xiong's Employment History in Controlled Gambling**

17 10. From October 2007 to July 2010, Xiong was employed by Jackson Rancheria Casino
18 Resort (Jackson) as a cook. Xiong disclosed on the Application that she was terminated from this
19 position for cause. The Bureau verified employment and found that Xiong was terminated for
20 dishonesty and theft and is not eligible for rehire. The Jackson TGA told the Bureau during its
21 background investigation that Xiong was terminated on July 12, 2010, for making herself a to-go
22 order containing a full order of shrimp when she had only paid for a half-order.

23 11. From August 2012 to October 2012, Xiong worked at Rolling Hills Casino as a
24 Dealer. Xiong disclosed on the Application, and the Bureau verified, that she was terminated for
25 failure to pass the introductory period.

26 12. In October 2012, Xiong applied for a tribal gaming license with the Shingle Springs
27 TGA to work at Red Hawk Casino (Red Hawk). The application for a tribal gaming license was
28 denied based on the assertion that Xiong had not disclosed on the application that she was

1 terminated from Jackson. Instead, Xiong wrote on the application that she “left for new
2 employment.”

3 13. Xiong first worked for the Graton from September 2013 to February 2015 as a dealer.
4 On February 18, 2015, her tribal gaming license was suspended and she was terminated. The
5 Graton TGA indicated that Xiong’s license was suspended because she failed to disclose on her
6 tribal gaming license application that she was employed by, and later terminated from, Jackson.
7 Xiong requested a hearing, after which the Graton TGA granted Xiong a one-year conditional
8 license; however, the decision came 41 days after Xiong was suspended, and Graton will only
9 hold a position for 30 days, therefore, Xiong was terminated on the basis of this technicality.

10 14. Xiong was subsequently rehired by Graton in June 2015 and has continued to work
11 there as a Dual Rate Dealer ever since.

12 **Bureau’s Statement of Reasons**

13 15. On May 1, 2023, the Bureau filed a Statement of Reasons with the Commission. In the
14 Statement of Reasons, the Bureau alleges the Application is subject to mandatory or discretionary
15 denial on the ground that Xiong is unsuitable for licensure because her prior conduct indicates
16 that she is not a person of good character, honesty, and integrity within the meaning of the
17 Gambling Control Act (Act), and that her prior activities pose a threat to the public interest of this
18 state, or to the effective regulation and control of controlled gambling.¹

19 16. The Bureau’s Statement of Reasons alleges that Xiong failed to disclose on her
20 Application that she had applied for and been denied a tribal gambling license for employment at
21 Red Hawk, and provided misleading information to the Bureau concerning the reason for her
22 failure to disclose the denial of her application at Red Hawk. Red Hawk denied her application
23 because she failed to disclose her termination from Jackson. The Statement of Reasons further
24 alleges that Xiong failed to disclose on the Application that she had been suspended from
25 employment at Graton in 2015 for failing to disclose that she was previously terminated by
26

27 ¹ The Bureau cites: Bus. & Prof. Code, §§ 19856, 19857 [discretionary denial],
28 19859, subs. (a) & (b) [mandatory denial]; Cal. Code Regs., tit. 4, § 12040, subs. (a)(1) & (2).

1 Jackson.

2 **Xiong's Testimony During the Evidentiary Hearing**

3 17. The allegations that informed the Bureau's Statement of Reasons were undisputed by
4 Xiong during the hearing. Xiong's testimony during the evidentiary hearing was credible. Xiong
5 testified that she did not disclose her termination from Jackson on the Application and other
6 employment applications because she believes her termination was pretextual. Xiong's testimony
7 and prior statements about her termination from Jackson support her subjective belief that her
8 termination was not the result of actions she took. Her testimony was consistent with her prior
9 written statements to the Bureau about her termination from Jackson where she states:

10 "I work for Jackson Rancheria Casino in the Hoa Viet restaurant for about three
11 years servicing Asian dishes and Pho. Most of the employee in the Hoa Viet
restaurant were Asian.

12 I was told the reason for my termination was dishonesty because I took more food
13 that [sic] what I paid. I remember packing the outgoing box with only two pieces
14 of meat. I acknowledge I should have pay for the full price. I forever regret this
stupid mistake I take [sic]. I wish I can be forgiven of this mistake.

15 I along with 7 other employees were terminated on the same day. A few months
16 after the massive termination the Hoa Viet restaurant closed due to innovation
[sic] of the casino.

17 When talking to other terminated employee we felt the restaurant were [sic]
18 closing down and they didn't want anyone to be on unemployment so the
employer wanted to find ways to terminate employee"

19 18. Xiong's statement and testimony are also consistent with the disclosure made on her
20 Application under the section "reason for leaving" the employment at Jackson: "Terminated -
21 Paid lessor [sic] amount for food at restaurant [where] she was employed."

22 19. Xiong submitted an employment application and a tribal gaming license application to
23 work at Red Hawk two years after her employment ended at Jackson. Xiong informed Red Hawk
24 that she left Jackson because she found another job rather than disclosing that she was fired by
25 Jackson for underpaying for a to-go order. Xiong testified that the reason she did not disclose on
26 the Application that her tribal gaming license application with Red Hawk was denied, was that
27 she was not offered a position of employment by Red Hawk. Xiong gave the same reason for
28 failing to disclose to Graton the denial of the tribal gaming license by Red Hawk's TGA. She

1 disclosed on her Application that she applied to work for Red Hawk. Concerning the allegation in
2 the Statement of Reasons that Xiong provided misleading information to the Bureau concerning
3 her failure to disclose that her tribal gaming license application was denied by the Red Hawk
4 TGA, Xiong testified that she did not intend to mislead the Bureau. Regarding the allegation that
5 Xiong failed to disclose on the Application that she had been suspended from employment at
6 Graton in 2015, Xiong testified that she remained an employee of Graton after the suspension so
7 she did not label her suspension as an event requiring disclosure.

8 20. The second time Xiong applied for a job with Graton she was told by an employee at
9 Graton to put down the fact that she applied for and been denied a tribal gaming license to work
10 for Red Hawk. After she told Graton what happened at Jackson she was rehired. Graton retained
11 Xiong because she is a “good worker.”

12 21. Xiong does not know how to write in English, her husband completed the Application
13 for her, submitted all written responses to the Bureau, and filled out her employment applications.
14 The written responses to the Bureau were translated for her behalf by her husband. She
15 acknowledges that the Application and written responses to the Bureau are based on her own
16 words.

17 22. During her testimony, Xiong acknowledge that mistakes were made on her
18 employment applications and responses to the Bureau. Going forward, she stated: “I will make
19 sure such a mistake doesn’t happen again. I would like to receive a license so I can continue my
20 career.”

21 **Letter of Reference**

22 23. A manager from Graton submitted a letter of recommendation on Xiong’s behalf. The
23 manager’s letter states that Xiong “is a person of good moral character, who cares about the
24 people around her and makes sure she always strives to do the right thing in all situations. Koua is
25 honest, kind, and is well-regarded among all the team members as a person of high integrity. I can
26 confirm that Koua is a careful, considerate, efficient and dedicated to the well-being of others and
27 is entirely peace-loving.” In closing, the letter states: “I would like to simply express my
28 confidence that she will surpass your expectations and would be a valuable asset to Graton Resort

1 Casino for any position or undertaking that she chooses to pursue.”

2 LEGAL CONCLUSIONS

3 *Applicable Statutes and Regulations*

4 24. Division 1.5 of the Business and Professions Code, the provisions of which govern the
5 denial of licenses on various grounds, does not apply to licensure decisions made by the
6 Commission under the Act. (Bus. & Prof. Code, § 476, subd. (a).)

7 25. The Act is an exercise of the police power of the state for the protection of the health,
8 safety, and welfare of the people of the State of California, and shall be liberally construed to
9 effectuate those purposes. (Bus. & Prof. Code, § 19971.)

10 26. Public trust that permissible gambling will not endanger public health, safety, or
11 welfare requires that comprehensive measures be enacted to ensure that gambling is free from
12 criminal and corruptive elements, that it is conducted honestly and competitively, and that it is
13 conducted in suitable locations. (Bus. & Prof. Code, § 19801, subd. (g).)

14 27. Public trust and confidence can only be maintained by strict and comprehensive
15 regulation of all persons, locations, practices, associations, and activities related to the operation
16 of lawful gambling establishments. (Bus. & Prof. Code, § 19801, subd. (h).)

17 28. The Commission has the responsibility of assuring that licenses, approvals, and
18 permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose
19 operations are conducted in a manner that is inimical to the public health, safety, or welfare. (Bus.
20 & Prof. Code, § 19823, subd. (a)(1).)

21 29. An “unqualified person” means a person who is found to be unqualified pursuant to
22 the criteria set forth in Section 19857, and “disqualified person” means a person who is found to
23 be disqualified pursuant to the criteria set forth in Section 19859. (Bus. & Prof. Code, § 19823,
24 subd. (b).)

25 30. The Commission shall have all powers necessary and proper to enable it fully and
26 effectually to carry out the policies and purposes of this chapter. (Bus. & Prof. Code, § 19824.)

27 31. The Commission has the power to deny any application for a license, permit, or
28 approval for any cause deemed reasonable by the Commission. (Bus. & Prof. Code, § 19824,

1 subd. (b).)

2 32. The Commission has the power to take actions deemed to be reasonable to ensure that
3 no ineligible, unqualified, disqualified, or unsuitable persons are associated with controlled
4 gambling activities. (Bus. & Prof. Code, § 19824, subd. (d).)

5 33. The burden of proving his or her qualifications to receive any license from the
6 Commission is on the applicant. (Bus. & Prof. Code, § 19856, subd. (a); CCR § 12060, subd. (j).)

7 34. An application to receive a license constitutes a request for a determination of the
8 applicant's general character, integrity, and ability to participate in, engage in, or be associated
9 with, controlled gambling. (Bus. & Prof. Code, § 19856, subd. (b).)

10 35. In reviewing an application for any license, the commission shall consider whether
11 issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the
12 license will undermine public trust that the gambling operations with respect to which the license
13 would be issued are free from criminal and dishonest elements and would be conducted honestly.
14 (Bus. & Prof. Code, § 19856, subd. (c).)

15 36. No gambling license shall be issued unless, based on all of the information and
16 documents submitted, the Commission is satisfied that the applicant is a person of good character,
17 honesty, and integrity. (Bus. & Prof. Code, § 19857, subd. (a).)

18 37. No gambling license shall be issued unless, based on all of the information and
19 documents submitted, the Commission is satisfied that the applicant is a person whose prior
20 activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the
21 public interest of this state, or to the effective regulation and control of controlled gambling, or
22 create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in
23 the conduct of controlled gambling or in the carrying on of the business and financial
24 arrangements incidental thereto. (Bus. & Prof. Code, § 19857, subd. (b).)

25 38. No gambling license shall be issued unless, based on all of the information and
26 documents submitted, the Commission is satisfied that the applicant is a person that is in all other
27 respects qualified to be licensed as provided in this chapter. (Bus. & Prof. Code, § 19857, subd.
28 (c).)

1 39. The Commission shall deny a license to any applicant who is disqualified for failure of
2 the applicant to provide information, documentation, and assurances required by this chapter or
3 requested by the chief, or failure of the applicant to reveal any fact material to qualification, or the
4 supplying of information that is untrue or misleading as to a material fact pertaining to the
5 qualification criteria. (Bus. & Prof. Code, § 19859, subd. (b).)

6 40. An application will be denied if the Commission finds that the applicant has not
7 satisfied the requirements of Business and Professions Code section 19857. (CCR § 12040, subd.
8 (a)(1).)

9 41. An application will be denied if the Commission finds that any of the provisions of
10 Business and Professions Code section 19859 apply to the applicant. (CCR §12040, subdivision
11 (a)(2).)

12 42. The hearing need not be conducted according to technical rules relating to evidence
13 and witnesses. Any relevant evidence may be considered, and is sufficient in itself to support a
14 finding, if it is the sort of evidence upon which reasonable persons are accustomed to rely upon in
15 the conduct of serious affairs, regardless of the existence of any common law or statutory rule that
16 might make improper the admission of the evidence over objection in a civil action. (Bus. & Prof.
17 Code, § 19871, subd. (a)(4); CCR § 12060, subd. (g)(2).)

18 43. An applicant for licensing or for any approval or consent required by this chapter,
19 shall make full and true disclosure of all information to the department and the commission as
20 necessary to carry out the policies of this state relating to licensing, registration, and control of
21 gambling. (Bus. & Prof. Code, § 19866.)

22 44. The Bureau relies, in large part, on the applicant's disclosures while conducting a
23 background investigation. The failure to honestly, accurately, and completely disclose
24 information on an application subverts the Bureau's efforts to conduct a thorough and complete
25 investigation. (Bus. & Prof. Code, §§ 19826, subd. (a) & 19866.)

26 45. Both the substance of an applicant's disclosures, and the truthfulness and
27 thoroughness of an applicant's disclosures, are considered by the Bureau in making a
28 recommendation as to the applicant's suitability for licensure, and by the Commission in making

1 a determination whether to approve or deny a license application. (Bus. & Prof. Code, §§ 19824,
2 subs. (a), (d), 19826, subd. (a) & 19866.)

3 ASSESSMENT OF XIONG'S SUITABILITY FOR LICENSURE

4 46. For the reasons provided below, the Commission finds that although information was
5 not properly disclosed to the Bureau and derogatory events in her employment history were
6 conveyed in a light favorable to Xiong, they do not render her ineligible for licensure under the
7 Act. The totality of the circumstances surrounding Xiong's Application demonstrate that she is a
8 person of good character, honesty, and integrity within the meaning of the Act. Her prior
9 activities do not pose a threat to the public interest of this state, or to the effective regulation and
10 control of controlled gambling. Therefore, cause exists to grant Xiong's Application.

11 47. Understandably, information Xiong supplied about her termination from Jackson gives
12 rise to the Bureau's bases for denial of her Application. However, Xiong's understanding of the
13 events as she understood them at the time of her termination from Jackson informed her approach
14 as to how she documented it to future employers and the Bureau. Xiong's testimony demonstrates
15 that she was justified in her subjective belief that her termination from Jackson was pretextual.
16 Because Xiong deemed her termination from Jackson to be pretextual, her failure to always label
17 her reason for leaving Jackson as a "termination" is excused in this instance because she disclosed
18 on her Application that she was terminated for cause from Jackson, and she disclosed that she had
19 applied to work for Red Hawk. This information also provided the Bureau the opportunity to fully
20 investigate Xiong's statements about her termination from Jackson.

21 48. Xiong's recent actions, and lack of derogatory information other than that related
22 to her termination from Jackson, also inform our decision to grant her Application. The most
23 relevant information in the Bureau's report on the Application about Xiong's termination from
24 Jackson is from 2018. This information is of Xiong acknowledging she made mistakes in
25 informing the Bureau and others about her termination from Jackson.

26 49. Finally, Xiong's successful employment in a controlled gambling environment
27 since 2013 also demonstrates that prior activities do not pose a threat to the public interest of this
28 state, or to the effective regulation and control of controlled gambling.

1 50. All documentary and testimonial evidence submitted by the parties that is not
2 specifically addressed in this Decision and Order was considered but not used by the Commission
3 in making its determination on the Application.
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ORDER

1. KOUA XIONG’S Application for Tribal Key Employee Finding of Suitability
Application is APPROVED.

2. No costs are awarded.

3. Each side to pay its own attorneys’ fees.

This Order is effective on August 10, 2023.

Dated: 8/10/2023 Signature: 
Paula LaBrie, Chair

Dated: 8/10/2023 Signature: 
Cathleen Galgiani, Commissioner

Dated: 8/10/2023 Signature: 
Eric Heins, Commissioner

Dated: 8/10/2023 Signature: 
William Liu, Commissioner