

**United States Small Business Administration
Office of Hearings and Appeals**

IN THE MATTER OF:

Choc-Taw Construction

Petitioner

SBA No. BDP-295

Decided: August 25, 2008

ORDER DISMISSING APPEAL

On August 20, 2008, Petitioner Choc-Taw Construction (Petitioner) appealed the decision of the Small Business Administration (SBA), denying Petitioner admission into the 8(a) Business Development (BD) program. *See* 13 C.F.R. Parts 124 & 134. According to the July 30, 2008, Reconsideration Determination Letter (Letter) enclosed with the Appeal Petition, the SBA determined Petitioner did not qualify for the 8(a) BD program because Petitioner had not demonstrated its business had a potential for success. *See* 13 C.F.R. § 124.107. The Letter also indicated that SBA determined Petitioner did not qualify for the 8(a) BD program on control, full-time management, and size grounds.

An 8(a) BD program applicant may appeal to the Office of Hearings and Appeals (OHA) a denial of its application only if the denial is based solely upon a negative finding of social disadvantage, economic disadvantage, ownership, or control. 15 U.S.C. § 637(a)(9); 13 C.F.R. § 124.206(a). A denial decision based at least in part on the failure to meet any other eligibility criterion is not appealable to OHA. *Id.*

Thus, an applicant may not appeal the denial of its application based on the lack of potential for success, regardless of whether lack of potential for success is the only ground, *Matter of Encore Solutions*, SBA No. BDP-161 (2001), or one ground along with some other, appealable ground, *Matter of Woodsman Construction Inc.*, SBA No. BDP-263 (2007). An Administrative Law Judge (ALJ) must decline to accept jurisdiction over any appeal of a denial of 8(a) BD program admission based in whole or in part on grounds other than a negative finding of social disadvantage, economic disadvantage, ownership or control. 13 C.F.R. § 134.405(a)(1).

Accordingly, because the SBA based its determination in part on the lack of potential for success, an eligibility criterion that is not appealable, there is no jurisdiction to hear this appeal and it must be dismissed.

The Petition appealing the SBA's denial of admission of Choc-Taw Construction into the 8(a) BD program is DISMISSED.

Subject to 13 C.F.R. § 134.409(c), this is the final decision of the Small Business Administration. *See* Small Business Act, § 8(a)(9)(D), 15 U.S.C. § 637(a)(9)(D); 13 C.F.R. § 134.409(a).

RICHARD S. ARKOW
Administrative Law Judge