

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

IN THE MATTER OF:

J.R. Ramon & Sons, Inc.

Petitioner

SBA No. BDP-333

Decided: December 4, 2009

ORDER DISMISSING APPEAL

On February 13, 2009, the Small Business Administration (SBA) notified J.R. Ramon & Sons, Inc. (Petitioner) that the firm was suspended from further participation in the 8(a) Business Development (8(a) BD) program. SBA cited several grounds for the suspension and stated the evidence before SBA indicates Petitioner was previously a participant in the 8(a) BD program from January 21, 1971 to June 25, 1979. SBA stated participation in the 8(a) BD program is limited to one-time eligibility and explained because Petitioner previously participated in the 8(a) BD program its one-time eligibility has been exhausted and continued participation in the 8(a) BD program is contrary to statute and regulation.

On April 9, 2009, Petitioner appealed the SBA's decision suspending Petitioner from the 8(a) BD program to the Office of Hearings and Appeals (OHA). Petitioner explains that when its president and owner, Joseph Ramon, Jr., applied to the 8(a) BD program in December of 2003, Mr. Ramon, Jr., was unaware that the company and his father, J.R. Ramon, Sr., had previously participated in the 8(a) BD program in the 1970s. Petitioner states the only thing it shares with the company operated by Mr. Ramon, Sr., is its name and corporate charter and that in all other respects Petitioner bears little resemblance to the company operated in the 1970s. Petitioner notes that the company was inactive from 1986 until Mr. Ramon, Jr., revived the company in 1994. Petitioner also emphasizes the amount of time that has passed since Mr. Ramon, Sr., participated in the 8(a) BD program. Furthermore, Petitioner argues there is inadequate evidence to support the SBA's determination to suspend Petitioner from the 8(a) BD program.

On May 14, 2009, the SBA moved to dismiss Petitioner's appeal petition or, in the alternative, for summary decision. 13 C.F.R. §§ 134.212(a), 134.405(a)(1). The SBA alleges the appeal petition, on its face, does not allege facts that, if proven true, would warrant reversal of the SBA's decision to suspend Petitioner from the 8(a) BD program. SBA states by statute, 15 U.S.C. § 636(j)(11)(B), and regulation, 13 C.F.R. § 124.108, a concern or disadvantaged individual can only participate in the 8(a) BD program one time. SBA asserts there is no dispute that Petitioner has previously participated and used its one-time eligibility and, accordingly, OHA does not have jurisdiction 13 C.F.R. §134.405(a)(1).

In the alternative, SBA argues, if not dismissed for lack of jurisdiction, SBA is entitled to a decision in its favor as a matter of law because there is no issue of material fact as to whether

adequate evidence exists that suspension was required to protect the federal government's interest. SBA asserts continuing 8(a) BD support to an intrinsically ineligible company is contrary to statute and regulation and exposes the federal government to legal action from eligible 8(a) BD companies.

On June 3, 2009, Petitioner responded to SBA's motion. Petitioner asserts SBA's motion is not supported by adequate evidence as required by 13 C.F.R. §124.305(d). Petitioner states SBA has failed to provide evidence that Petitioner and Mr. Ramon, Sr., previously participated in the 8(a) BD program.

On June 19, 2009, SBA replied to Petitioner's response. SBA attached a copy of a report from SBA's General Login System demonstrating that Petitioner previously participated in the 8(a) BD program and exercised its one-time eligibility. SBA noted the evidence was before the Associate Administrator for Business Development at the time of his decision to suspend Petitioner from participation in the 8(a) BD program.

On October 19, 2009, the case was assigned to me.

The Small Business Act and SBA regulations limit the jurisdiction of an administrative law judge to hear appeals only from certain SBA 8(a) program determinations. 15 U.S.C. § 637(a)(9)(E)(i); 13 C.F.R. § 134.305(a)(1). I am required to decline jurisdiction when the "appeal does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the determination." 13 C.F.R. § 134.305(a)(1). One of the grounds for SBA's determination was that Petitioner previously used its one-time eligibility for the 8(a) BD program and is ineligible for participation in the program. 13 C.F.R. § 124.108(b). Even if accepted as true, the arguments Petitioner presents in its appeal are insufficient to warrant reversal. The fact Petitioner has previously used its one-time eligibility in the 8(a) BD program is not altered by Petitioner's arguments: Mr. Ramon, Jr., lacked knowledge of Petitioner's previous participation in the 8(a) BD program; Petitioner changed its location, logo, employees, customers, North American Industry Classification System codes, and shareholders; or significant time has elapsed since it previously participated in the 8(a) BD program.

Accordingly, I am required to decline jurisdiction of this appeal. 13 C.F.R. § 134.305(a)(1). The SBA's motion to dismiss for lack of jurisdiction must be GRANTED and the appeal of the SBA's decision to suspend Petitioner from the 8(a) program must be DISMISSED.

Subject to 13 C.F.R. § 134.409(a), this is the final decision of the Small Business Administration and is binding on the parties. 15 U.S.C. § 637(a)(9)(D); 13 C.F.R. § 134.409(a).

BRENDA P. MURRAY
Administrative Law Judge

