

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

IN THE MATTER OF:

Forrester Developer, LLC

Petitioner

SBA No. BDP-408

Decided: August 24, 2011

APPEARANCES

Elizabeth Forrester, Managing Member, Pro Se, for Forrester Developer, LLC

Maymangwa Flying Earth, Office of General Counsel, Small Business Administration

FINAL DECISION

I. Introduction and Jurisdiction

This proceeding arises under the authority of Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), and is governed by the Rules of Procedure Governing Cases before the Office of Hearings and Appeals located at 13 C.F.R. §§ 134.401 through 134.409. There is jurisdiction to decide this appeal. *See* Small Business Act § 8(a)(9)(A), (B)(ii), 15 U.S.C § 637(a)(9)(A), (B)(ii); 13 C.F.R. § 134.201(j)(1) The appeal is timely *See* 13 C.F.R. § 134.202(a)(1).

Petitioner Forrester Developer, LLC, appeals the decision of the United States Small Business Administration (“SBA”) denying Petitioner certification as a participant in the 8(a) Business Development (“8(a) BD”) program After reviewing the record, the undersigned finds that SBA's decision was not arbitrary, capricious, or contrary to law. It is therefore affirmed for the reasons discussed below.

II. Background

Petitioner, acting through Elizabeth Forrester, applied for certification as a participant in the 8(a) BD program on August 25, 2009 R. Ex. X. In a letter dated August 26, 2010, SBA denied Petitioner's application on three grounds. R. Ex. F at 1-3. First, SBA determined that Ms. Forrester, the managing member of Forrester Developer, LLC, and individual upon whom its eligibility was to be based, was “not socially and economically disadvantaged due to” her gender within the meaning of 13 C.F.R. § 124.103 because she had not submitted any evidence of specific instances of bias. R., Ex. F at 1-2. Second, SBA determined that Ms. Forrester did “not possess the level of managerial or technical expertise necessary to control the day-to-day

management of Petitioner as required under 13 C.F.R. § 124.106. R. Ex. F at 2. SBA came to this conclusion because non-disadvantaged individuals working for Petitioner earned more than Ms. Forrester and because Ms. Forrester's husband, James P Forrester, Jr., owned 10% of Petitioner, held the critical contracting license that enabled Petitioner to operate, and had substantially more experience in the construction industry than did Ms. Forrester. R. Ex. F at 2-3. Finally, SBA determined that Petitioner did “not have the potential to successfully meet the business development objectives of the 8(a) program” per 13 C.F.R. § 124.107, R. Ex. F at 3. SBA closed the denial letter by inviting Petitioner to submit additional information and request reconsideration. R. Ex. F at 4-5.

Petitioner submitted the missing information with a request for reconsideration on September 29, 2010. R. Ex. D at 1. Ms. Forrester supported her claim of social and economic disadvantage by recounting ten specific instances that allegedly illustrated how substantial and chronic gender bias had negatively impacted her ability to enter and advance in the world of business. R. Ex. D at 1-4. She explained that the vagueness of her initial application “was due to a lack of ready remembrances.” R. Ex. D at 1. The first alleged incident occurred in 1995 when Ms. Forrester was an undergraduate in Auburn University's School of Industrial Engineering. R. Ex. D. at 1-2. She received grades “that were just fractions” lower than a male teammate for a group project they completed in a particular statistics class. R. Ex. D at 1. When Ms. Forrester asked the professor, Dr Hool, why this was, he smiled and said: “Beth, Kyle is a male engineering student, we have to stick together.” R. Ex., D at 1-2. Ms. Forrester stated that she is “certain that this social pressure hindered [her] college grades and entry salary into the work place[.]” R. Ex., D at 2. Ms. Forrester submitted an affidavit from a former female classmate to support, this allegation. R. Ex. E at 2.

The second alleged incident occurred in 1997 just prior to Ms. Forrester's first annual evaluation in her first professional engineering job. R. Ex D at 2. She was working at the University of Alabama at Birmingham (“UAB”) Hospital in Birmingham, Alabama. R Ex D at 2 Her direct supervisor and evaluator, Wayne Anderson, asked her “to come to the evaluation and wear [her] bikini.” R. Ex. D at 2. Ms. Forrester did file a complaint with the Hospital's Human Resources Department, but “was unsuccessful in obtaining a copy of the report” to provide SBA. R. Ex. D at 2.

The third alleged incident occurred in 2004 when Ms. Forrester was employed by McKesson Corporation as a project manager. R. Ex. D at 2 To complete a project, she needed the facilities management department to install new electrical wiring. R. Ex. D at 2 The manager of the facilities management department kept referring to Ms. Forrester as “Babe” or “Baby.” R Ex. D at 2. Ms. Forrester “corrected him and said: “It is Beth, not Baby, and I am here to request electrical service.” R. Ex. D at 2.

The fourth alleged incident occurred in 2006 when Mr. Forrester was “the owner and controlling manager of Petitioner. R. Ex. D at 2. To cut over head costs, she offered an employee, David Schofield, an equity stake in Petitioner. R. Ex. D at 2. Ms. Forrester states that his “reaction was that the couldn't work for a woman, and was defiantly [sic] not going to partner with one R. Ex. D at 2. Later that year, Mr. Schofield left Petitioner, “took sensitive confidential information” including an “approved subcontractor and client list,” and started a competing

company. R. Ex. D at 2-3. Ms. Forrester claims that Mr. Schofield “was immediately successful due to his convincing clients that he was more qualified than a women controlled company.” R., Ex. D at 2-3. Ms. Forrester states that Mr. Schofield “was just a draftsman,” but that “every male client used Mr. Schofield after his resignation” and that Mr. Schofield is now one of Petitioner's “largest competitors.” R. Ex. D at 3.

The fifth and sixth alleged incidents occurred in 2007 when Petitioner was acting as general contractor on a project at Bell Ridge in Wetumpka, Alabama, R. Ex. D at 3. A framing subcontractor did not want to perform a contractual clause requiring him to either recycle or reduce the amount of framing material used. R. Ex. D at 3. Ms. Forrester “enforced the subcontract” despite the subcontractor's resistance. R. Ex. D at 3. She submitted the affidavit of a Mr. Wesley Justice to support this allegation. R. Ex. D at 3. On that same project, an electrical subcontractor told Ms. Forrester: “You look better in person than on your business card.” R. Ex. D at 3.

The seventh alleged incident occurred in 2008 when Petitioner bid on a project with an architect named V Lloyd. R. Ex. D at 3, Initially, Petitioner submitted the only bid R. Ex. D at 3. The architect threw out the bid and solicited more offers R. Ex. D at 3. Ms. Forrester says that she was ignored during the second round of bidding, but was nonetheless awarded the project. R. Ex. D at 3 Petitioner successfully completed the project, but Ms. Forrester states that she “was reminded how being uninvited to participate feels. . . .” R. Ex. D at 3. (emphasis removed). Ms. Forrester submitted an affidavit from Ron Bartholomew as proof of this incident. R Ex E at 1

The eighth alleged incident occurred in 2008 Ms., Forrester applied for a full time position as Energy Manager with the Elmore County School Board. R. Ex. D at 3. Ms. Forrester states that she did receive an interview, and that the positron was awarded to a less-qualified male applicant. R. Ex. D at 3. She submitted the cover letter from her job application to support this claim R. Ex., E at 3.

The ninth alleged incident occurred in 2009. R. Ex D. at 3 Ms. Forrester was pregnant when “a client unexpected refused to sign a contract.” R. Ex. D at 3. The client, Mercer Stone, wrote Ms. Forrester a letter stating that, he did not think she should perform the work while pregnant. R. Ex. D at 3-4, Ex E at 7. Ms. Forrester included this letter with her submissions to SBA. R Ex. E at 7.

The tenth and final alleged incident of discrimination concerns a group of businessmen in Ms. Forrester's community. R. Ex. D at 4. Ms. Forrester states that every morning, a “group of businessmen get together for breakfast,” and while they eat they “talk business, and speak of the day's happenings.” R. Ex. D at 4. Ms. Forrester's office is located across from the cafe where this group meets, but she is “neither welcomed nor accepted in their gathering.” R. Ex. D at 4.

Addressing the issue of control and management over Petitioner, Ms. Forrester stated that she works for Petitioner on a full-time basis and is responsible for both “the day-to-day managerial responsibilities,” and the “tactical and strategic” planning. R Ex. D at 4. Ms. Forrester claims to “make the hiring and firing decisions” as well as all other decisions, and to “have all voting rights. . . .” R. Ex. D at 4 She stated that non-disadvantaged employees receive

higher salaries than she does because she wishes to minimize Petitioner's current liabilities. R. Ex. D at 4. Ms. Forrester submitted a number of affidavits attesting that she controls the management of Petitioner and that Mr. Forrester has been employed on a full-time basis by companies other than Petitioner since 2007. *See* R. Ex. D at 4, Ex., E at 4-5, 8-10, Ex M at 41-42.

Finally, Petitioner submitted additional financial information to demonstrate that it did have the economic potential to successfully meet the 8(a) business development objectives. R. Ex. D at 4.

By letter dated December 13, 2010, SBA informed Petitioner that it had reviewed the additional submissions and determined that Petitioner had not overcome the deficiencies in the original application. R. Ex. A at 1. SBA found that Petitioner had adequately demonstrated its potential for success in the program. R. Ex. A at 1. However, Petitioner had not proven that Ms. Forrester was socially and economically disadvantaged or that she retained adequate control over Petitioner's management and operation. R. Ex. A at 1.

On the issue of Ms. Forrester's disadvantaged status, SBA stated that the alleged incidents of gender bias were not sufficiently "chronic and substantial," and that the allegations themselves lacked "the quality and quantity of detailed information necessary for admission to the program." R. Ex. A at 1. In the first alleged incident regarding school grades, Ms. Forrester had not indicated what grade she actually received, how she knew what the other student's grades were, how it negatively impacted her, or how it was an indication of gender bias.¹ R. Ex. A at 1. In the second alleged incident that occurred at UAB Hospital, Ms. Forrester failed to produce documentation of her complaint against her supervisor or indicate whether it negatively impacted her employment and advancement. R. Ex. A at 2.

SBA did not refer to Ms. Forrester's third alleged incident of bias when she was employed at McKesson Corporation. R. Ex. A at 2. For the fourth alleged incident, SBA questioned why Petitioner did not seek legal action against Mr. Schofield for stealing proprietary information and breaching confidentiality. R. Ex. A at 2. It also faulted Ms. Forrester for not providing documentation that Mr. Schofield had ever been employed by Petitioner or how the allegations demonstrated gender bias. R. Ex. A at 2. SBA stated that Ms. Forrester had also failed to produce documentation of the fifth alleged incident involving the framing subcontractor, and had failed to explain how the incident demonstrated bias. R. Ex. A at 2. SBA did not address the sixth allegation involving the electrical subcontractor.

In the seventh alleged incident involving the bids with architect V. Lloyd, SBA found that Ms. Forrester's claim that Petitioner's initial bid was thrown out due to gender bias was speculative. R. Ex. A at 2. SBA also found that there had been no harm because Petitioner was ultimately awarded the contract and successfully completed the job. R. Ex. A at 2. SBA dismissed the eighth allegation involving Ms. Forrester's application for employment with the

¹ SBA does not indicate how Ms. Forrester could reasonably have obtained proof of her classmate's grades.

Elmore City School Board because there was no evidence of why she was not selected for the position, of who did ultimately obtain the position, of why Ms. Forrester was a better candidate, or how the incident was indicative of gender bias.

SBA did not address the ninth allegation in which Ms. Forrester claimed Petitioner lost a job after the client learned she was pregnant. SBA did find that the tenth allegation involving the breakfast group was not indicative of gender bias because Ms. Forrester had not indicated that she actually sought to have a business relationship with any of the local businessmen in question. R. Ex. A at 2.

From “the totality of the information,” SBA determined that Ms. Forrester had failed to prove by the preponderance of the evidence that she was socially disadvantaged as a direct result of a pattern of gender bias. R. Ex. A at 2.

On the issue of control, SBA noted that Ms. Forrester had submitted “a conclusory affidavit from [her] nondisadvantaged spouse to indicate that he [did] not control the firm and is not involved in the firm.” R. Ex. A at 3. SBA acknowledged “two other conclusory affidavits” from Mr. Forrester's supervisors that also indicated his lack of involvement with Petitioner. R. Ex. A at 3. SBA determined that this information did not overcome its concerns regarding Ms. Forrester's “lack of management or technical background,” or that “a nondisadvantaged equity owner provides the critical licensing to” Petitioner. R. Ex. A at 3. SBA also found that Ms. Forrester had not explained why her compensation was lower than that of Petitioner's other employee. R. Ex. A at 3. As a result, SBA determined that Petitioner had not adequately demonstrated that it was directly controlled and managed by a disadvantaged individual. R. Ex. A at 3.

Petitioner filed this timely appeal with SBA's Office of Hearings and Appeals (“OHA”) on February 1, 2011, pursuant to 13 C.F.R § 124.206.

III. Standards

The 8(a) BD program exists “to assist eligible small disadvantaged business concerns compete in the American economy through business development.” 13 C.F.R § 124.1. To qualify for entry into the program, a small business must be “unconditionally owned and controlled by one or more socially and economically disadvantaged individuals” of good character. 13 C.F.R. § 124.101.

A “socially disadvantaged individual” is someone who has “been subjected to racial or ethnic prejudice or cultural bias within American society because of the person's identity as a member of a group, “and without regard to [his or her] individual qualities.” 13 C.F.R. § 124.103(a). An individual claiming disadvantage on the basis of gender “must establish individual social disadvantage by a preponderance of the evidence.” 13 C.F.R. § 124.103(c)(1). The individual must produce evidence proving that she personally suffered “substantial and chronic social disadvantage in American society” due to her gender. 13 C.F.R. § 124.103(c)(2)(h); *In the Matter of Sierra Envtl. Servs.*, No. MSB-550, 1996 SBA8A LEXIS 15 at *18 (July 31, 1996). Additionally, the evidence must prove that this social disadvantage negatively impacted the

individual's "entry and/or advancement in the business world," *Sierra Env'tl. Servs.*, 1996 SB A8A LEXIS 15 at *18; 13 C.F.R. § 124.103(c)(2)(iii) "This nexus may be shown by any relevant evidence," but SBA will always consider "evidence of discrimination in education, employment, and business history" *Sierra Env'tl. Servs.*, 1996 SBA8A LEXIS 15 at **18-19; 13 C.F.R. § 124.103(c)(2)(iii).

To be "controlled by" a disadvantaged individual, a small business's "day-to-day management" and "daily business operations must be conducted by" that individual 13 C.F.R. § 124.106. The individual "must hold the highest officer position" in the business and "must have managerial experience of the extent and complexity needed to run the" business. 13 C.F.R. § 124.106. The individual does not need to "have the technical expertise or possess a required license" in order to control the business so long as the individual "can demonstrate that he or she has ultimate managerial and supervisory control over those who [do] possess the required licenses or technical expertise." 13 C.F.R. § 124.106. "However, where a critical license is held by a non-disadvantaged individual" with an equity interest in the business, that "non-disadvantaged individual may be found to control the firm," 13 C.F.R. § 124.106. Similarly, a non-disadvantaged individual may not receive more compensation from the business than the disadvantaged individual, unless the disadvantaged individual proves that doing so helps the business.

In this case, SBA determined that Petitioner failed to prove by a preponderance of the evidence that Ms. Forrester is socially disadvantaged or that she retains absolute control over Petitioner. This determination must be upheld unless a review of the entire written administrative record demonstrates that "SBA made a clear error of judgment" making its decision "arbitrary, capricious, or contrary to law." *In the Matter of Oak Hill Rehab., Specialists, Inc.*, No BDP 154, 2001 SBA8A LEXIS 21 at **6-7 (Aug., 7, 2001) (citing *Motor Vehicle Mfrs Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)); 13 C.F.R. § 134406(b). "A clear error of judgment can be found if SBA's determination "(1) fails to properly apply the law and regulations to the facts of the case; (2) fails to consider an important aspect of the problem; (3) offers an explanation for its determination that runs contrary to the evidence; or (4) provides an implausible explanation that is more than a difference" of opinion. *Oak Hill*, 2001 SBA 8A LEXIS 21 at *7. If, however, SBA articulates "a reasonable explanation for its action, including a rational connection between the facts found and its determination," then the determination is reasonable and will be sustained. *Id.*

IV. Arguments

Ms. Forrester argues that the record evidence compels a finding that she is socially disadvantaged and exercises full managerial control over Petitioner.

On the issue of disadvantage, Ms. Forrester contends that the allegations and supporting affidavits clearly show that gender bias harmed her ability to advance in the business world. In the first account regarding her grades at Auburn University, she argues that her professor's statement shows she received lower marks solely because she was a woman. Appeal Attachment 3. This harmed her because "[g]rades are a factor when negotiating entry salary into the engineering sector." Appeal Attachment 3. Regarding the second account, harassment at UAB

Hospital, Ms. Forrester states that she has provided enough information to allow SBA to verify her version of events. Appeal Attachment 3. For the fourth, fifth, and sixth incidents involving Mr. Schofield and the two subcontractors, respectively, Ms. Forrester argues that the affidavits and her account show that the men refused to work with her because she was female, and that this harmed her standing as a leader. Appeal Attachment 3. Similarly, Ms. Forrester argues that the affidavits show that the architect in the seventh account was hostile to her because of her gender. Appeal Attachment 3. She states that Petitioner has not received any additional business out of that project, proving that it harmed her standing in the profession. Appeal Attachment 3. The eighth incident involving her application to the Elmore City School Board, and the tenth incident involving the local businessmen's breakfast meeting, illustrate that Ms. Forrester is not "seen as an equal player" in the business community. Appeal Attachment 3. Finally, Ms. Forrester faults SBA for not discussing in its determination her ninth alleged incident, in which Petitioner lost a job because of Ms. Forrester's pregnancy. Appeal Attachment 3, Ms. Forrester argues that SBA erred by discounting or ignoring the evidence, and its subjective determination that she is not socially disadvantaged was arbitrary and capricious. Appeal Attachment 4.

On the issue of control, Ms. Forrester denies that her non-disadvantaged spouse holds the critical license for Petitioner. Appeal Attachment 3. She also faults SBA for ignoring several affidavits stating that she controls the management of Petitioner. Appeal Attachment 3. Finally, she argues that she adequately explained why her refusal to draw a salary is in Petitioner's best interest. Appeal Attachment 3. Ms. Forrester contends that SBA erred when it determined that she does not hold complete control over Petitioner. Appeal Attachment 4.

SBA argues in response that its decision to deny Participant access to the 8(a) BD program was reasonable and supported by the evidence. On the issue of Ms. Forrester's disadvantaged status, SBA argues that she did not produce actual evidence of either discrimination, or of a nexus between discrimination and her ability to succeed in the business world, in all but one of her alleged incidents. Answer at 5-9. SBA contends that the one incident in which she did establish that gender bias hindered her advancement did not evince the substantial and chronic social disadvantage contemplated by the law. Answer at 8. Addressing the issue of control, SBA argues that it reasonably concluded that Ms. Forrester does not in fact exert absolute control over Petitioner because she depends on non-disadvantaged individuals for essential licenses, those non-disadvantaged individuals receive more compensation from Petitioner, and one of those individuals is a close family member with an equity interest in Petitioner. Answer at 10-13. SBA posits that Ms. Forrester failed to adequately answer these concerns. Answer at 13.

V. Discussion

After reviewing the record, the undersigned finds that SBA reasonably determined that Ms. Forrester is not a socially disadvantaged individual within the meaning of 13 C.F.R. § 124.103. To qualify for the 8(a) BD program, Petitioner has the burden of producing a preponderance of evidence proving both that Ms. Forrester experienced chronic and substantial discrimination due to her gender, and that this discrimination negatively impacted her entry or advancement in the business world. 13 C.F.R. § 124.103; *In the Matter of Spectrum Contracting Servs., Inc.*, No. BDP-378, 2010 SBA LEXIS 96 at *36 (Oct 14, 2010). This evidence may take

the form of the applicant's own, uncorroborated statements *In the Matter of Toahon Enters., Inc.*, No. SDBA-139, 2000 SBA LEXIS 33 at *16 (May 9, 2000)² (citing *In the Matter of Bitstreams, Inc.*, No. BDP-122, 1999 SBA8A LEXIS 12 at *7 (July 2, 1999)). However, SBA may consider the unexplained absence of corroborating evidence when weighing the value of the applicant's statement, particularly where circumstances indicate that such evidence is available *Id.* at **16-17. SBA may also discount statements that are inherently improbable, vague, conclusory, speculative, or inconsistent with other credible evidence in the record. *Id.* at *17.

While Petitioner has produced evidence that Ms. Forrester has suffered “gender discrimination which may have affected her success,” there is a “qualitative and quantitative failure of proof” that this is so. *In the Matter of Skyview Excavating & Grading, Inc.*, No. MSB-590, 1997 SBA8A LEXIS 27 at *11 (Oct. 27, 1997); see *Bitstreams, Inc.*, 1999 SBA8A LEXIS 12 at *7; *Siena Envtl. Servs.*, 1996 SBA8A LEXIS 15 at *20; *In the Matter of Interword Corp. Ltd.*, No. MSB-490, 1994 SBA8A LEXIS 68 at **29-30 (Nov, 21, 1994).

Ms. Forrester claims to have suffered from discrimination in an undergraduate statistics course at Auburn University. Her male classmate “received grades that were just fractions” higher for group work he and Ms. Forrester completed together. R. Ex D at 1. When she confronted her professor about this disparity, the male professor stated: “Beth, Kyle is a male engineering student, we have to stick together.” R. Ex. D at 1-2. Ms. Forrester's own statement and the supporting affidavit from a female classmate provide sufficient evidence that she likely experienced negative gender bias at the hands of this professor. The evidence does not, however, establish the critical nexus between this incident of negative bias and Ms. Forrester's subsequent alleged inability to advance in the business world. The record does not indicate what grade Ms. Forrester ultimately received in the class, or how this one grade affected her graduating grade-point average. It also does not include any information about her starting salary out of college. The record does include a copy of Ms. Forrester's resume, which indicates that she received her undergraduate degree in Industrial Engineering in March 1996, and began full-time employment as an industrial engineer in April 1996. R. Ex. I at 1. Ms. Forrester's statements that this one grade affected her ability to obtain work in her field after graduation and lowered her starting salary are conclusory and speculative. While SBA incorrectly found that this incident did not reflect gender bias (R. Ex. A at 1), it did not err in discounting this portion of Ms. Forrester's narrative.

Deficiencies in other portions of Ms. Forrester's narrative are similar to those outlined above. Ms. Forrester reports that in 1997, her supervisor at her first professional engineering job told her to wear a bikini to her first annual review. R. Ex. D at 2, While Ms. Forrester reports that she did file a complaint against this supervisor, she does not explain why she was unable to obtain a copy of that complaint or any other evidence to corroborate her account. R. Ex. D at 2;

² The petitioner in *In the Matter of Toalson Enterprises, Inc.* had applied for certification as a Small Disadvantaged Business (“SDB”), rather than admission to the 8(a) BD program. Cases analyzing eligibility for the SDB program guide analyses under the 8(a) BD program because SBA applies the same eligibility criteria in both programs. *In the Matter of Ace Technical LLC*, No SDBA-178 at 4 (April 17, 2008); *Toalson Enters. Inc.*, 2000 SBA LEXIS 33 at *15.

Appeal Attachment 3. Ms. Forrester also does not explain the outcome of this incident or show how it impacted her professional advancement. Ms. Forrester's resume shows that she stayed with that employer for one year and seven months before taking a position as industrial engineer with another firm in November 1997. R. Ex. I at 1. She was employed there until July 1999 and held the titles of Industrial Engineer, Analyst, and Operational Consultant. R. Ex. I at I. SBA did not err in discounting this portion of the narrative due to the lack of corroborating evidence or any explanation of how this incident negatively impacted Ms. Forrester's professional advancement.

Ms. Forrester next reports that in 2004, seven years after the prior incident, she had to work with a department manager who referred to her as “Babe” or “Baby.” R. Ex. D at 2. The manager does not appear to have been in Ms. Forrester's direct chain of command. At this time Ms. Forrester was herself in a supervisory position, and she reports that she confronted the manager about his comments and secured his participation. R. Ex. D at 2; Ex. I at 1. The manager's comments, though offensive, do not themselves illustrate substantial gender discrimination per se. For example, Ms. Forrester does not claim that the manager refused to deal with her because she was a woman. More importantly, Ms. Forrester does not indicate how this manager's behavior negatively affected her ability to advance in the business world SBA did not refer to this incident in its determination, but did not even give it little or no weight.

The fourth incident in Ms. Forrester's narrative concerns a former employee turned competitor, Mr. Schofield. Ms. Forrester reports that when she offered Mr. Schofield an equity interest in Petitioner in 2006, he stated that “he couldn't work for a woman, and was defiantly [sic] not going to partner with one.” R. Ex. D at 2-3. He later resigned, stole confidential information from Petitioner, launched his own company, and was immediately successful despite his being “just a draftsman,” all because of Ms. Forrester's gender. R. Ex. I at 3. There are multiple problems with this account. First, the record shows that at the time of this incident, Mr. Forrester was still working for Petitioner on a full-time basis. R. Ex. I at 2. He also owned a 49% equity interest in Petitioner, and was named in as the initial manager by Petitioner's then-current Operating Agreement. R. Ex. M at 79-80 (Operating Agreement of Forrester Developer, LLC dated April 4, 2003). Ms. Forrester's bald statement that she was the “owner and controlling manager” of Petitioner at the time of this incident does not explain Mr. Forrester's role in Petitioner and Petitioner's relationship with Mr. Schofield. R. Ex. D at 2. Ms. Forrester also does not provide any objective evidence that Mr. Schofield took confidential information from Petitioner because of Ms. Forrester's gender, that he was in fact “immediately successful,” or that any such success was attributable to gender bias. R. Ex. D at 2-3. SBA noted in its determination that Ms. Forrester did not include evidence that Mr. Schofield had been employed by Petitioner and did not explain why legal action was not taken against him. R. Ex. A at 2. This record supports SBA's conclusion that Ms. Forrester failed to prove that this was an incident of gender bias impairing her ability to succeed in business.

The fifth and sixth alleged incidents involved two of Petitioner's subcontractors in 2007. R. Ex. D at 3. A framing subcontractor resisted certain provisions in his contract requiring him to reduce or recycle framing materials. Neither Ms. Forrester's account nor the supporting affidavit from Wesley Justice indicate that this resistance was a product of gender bias. R. Ex. D at 3, Ex. E at 4. Ms. Forrester's account does indicate that she enforced the letter of the contract, and there

is no evidence that the subcontractor's intransigence had a negative impact on her business. R. Ex. D at 3. An electrical subcontractor working on that same project told Ms. Forrester: "You look better in person than on your business card" R. Ex. D at 3. Ms. Forrester states that employee Dominic Labriola was present when this statement was made, but the record does not contain an affidavit from Mr. Labriola to corroborate her account. R. Ex. D at 3. While the statement may have been offensive, Ms. Forrester does not explain how it was an example of active discrimination or show how it directly harmed her business.

The seventh incident in Ms. Forrester's narrative alleges that when Petitioner was the only firm to bid on a project, architect V Lloyd threw out Petitioner's bid because of Ms. Forrester's gender. R. Ex. D at 3 The architect then reopened the contract to bids, and ignored Petitioner in subsequent rounds of bidding. R. Ex. D at 3. Petitioner nevertheless won the contract and successfully completed it. R. Ex. D at 3. Ms. Forrester produced an affidavit from Ron Bartholomew indicating that the architect attempted to degrade Ms. Forrester and spoke of her negatively. R. Ex. E. at 1. While this evidence shows that the architect likely harbored gender bias against Ms. Forrester, it is speculation to say that this was the reason the contract was opened to rebidding under the circumstances. Petitioner ultimately won the bid, and Ms. Forrester did not indicate in the application how her ability to advance in business was otherwise harmed by this incident. SBA reasonably discounted these allegations in its determination.

Ms. Forrester's eighth alleged incident concerns her application for a full-time position with the Elmore County School Board in 2008. R. Ex. I at 3. She claims that she was not given an interview, and that a less-qualified male received the position. R. Ex. I at 3. This is pure speculation. The record does not contain any evidence showing the job requirements, salary expectations, why Ms. Forrester did not receive an interview, who was ultimately hired, or why. Ms. Forrester did submit a copy of the cover letter she gave to the School Board, but this does not reveal any more information than Ms. Forrester's conclusory statement. R. Ex. E at 3. SBA correctly determined that there is no credible evidence to support this allegation of bias.

SBA admits that the ninth account in Ms. Forrester's narrative does demonstrate a supported incident where gender bias interfered with Ms. Forrester's ability to advance in business Answer at 8-9 When Ms. Forrester was pregnant with her second child in 2009, a client refused to sign a contract. R Ex D at 3. The client later wrote her a letter explaining that he "did not believe" she should be walking around the hills on his property. R. Ex. D at 3, Ex. E at 7. The client gave other, non-gender based reasons as well. R.Ex. E. This letter is in the record. R. Ex. E at 7. Giving Ms. Forrester the benefit of the doubt, her statement and the client's letter establish that she lost a business opportunity due in large part to negative gender discrimination.

Ms. Forrester's tenth and final account of gender discrimination alleges that she is not welcome at a regular breakfast meeting of local businessmen because she is a woman R. Ex. D at 4. Ms. Forrester does not allege, and the record does not contain, any objective indication that she is in fact unwelcome at these meetings, or that she is unwelcome because of her gender rather than some other reason Similarly, there is no allegation or evidence that Ms. Forrester has lost any specific business opportunities by not attending these meetings. This allegation is speculative and does not show that gender bias has impeded Ms. Forrester's professional advancement.

Taken together, nine of Ms. Forrester's ten alleged incidents of bias lack credible evidence of either substantial social disadvantage, or that this disadvantage impaired Ms. Forrester's advancement in the business world. *See* 13 C.F.R. § 124.103(c)(2). This leaves one incident in which Ms. Forrester was able to show that she actually lost a potential contract due to her gender. A single, significant incident does not show “chronic social disadvantage” as contemplated by 13 C.F.R. § 124.103(c)(2)(ii). *Spectrum Contracting Servs., Inc.*, 2010 SBA LEXIS 96 at *33. Weighing against Ms. Forrester's claim of disadvantage, the record shows that she received her undergraduate degree with a 3.00 grade-point average, earned an M B A. with a 3.45 grade-point average, and has been continuously employed in her field since graduating college. R. at Exs. I, K; *see* 13 C.F.R. § 124.103(c)(2)(iii) (“SBA will consider education, employment and business history to see if the totality of circumstances shows disadvantage.”); *Sierra Envtl. Servs.*, 1996 SBA8A LEXIS 15 at *22 (applicant with successful education and employment history not disadvantaged).

SBA's written determination is not a model of “ideal clarity.” *Fagan v. U.S. Small Bus. Assoc.*, 783 F. Supp 1453, 1459 (D D C 1992) (quoting *Bowman Tramp, Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 286 (1974)) It does not expressly refer to three of the incidents in Ms. Forester's narrative Still, SBA's “path may reasonably be discerned,” and a review of the record shows that any error was harmless. *Id.* (quoting *Bowman Transp., Inc.*, 419 U.S. at 286). SBA reasonably determined from the record before it that Ms. Forrester failed to prove she had suffered substantial and chronic social disadvantage due to her gender that negatively impacted her “entry into or advancement in the business world.” 13 C.F.R. § 124.103(c)(2)(iii). The undersigned is quick to note that nothing in this decision is meant to minimize the personal significance of the events in Ms. Forrester's narrative. Occasional insensitive or even derogatory remarks do not, however, constitute the type of “substantial and chronic social disadvantage” required to qualify as a socially disadvantaged individual under the 8(a) BD program. *See Siena Envtl. Servs.*, 1996 SBA8A LEXIS 15 at **23-24, 26, 28 (comments not substantial).

SBA reasonably concluded that “[b]ased on the totality of the information” in the record, Ms. Forrester did not provide “sufficient details of specific instances, or supporting documentation (where available),” showing that her “claims of social disadvantage are chronic and substantial.” R. Ex. A at 2. Because SBA correctly found that Ms. Forrester has not shown that she is socially disadvantaged, it is not necessary to evaluate SBA's determination that Ms. Forrester has not adequately demonstrated that she retains sole control over Petitioner. “It is well settled that ‘if there is more than one reason for denying an 8(a) application and at least one is proper, the SBA's denial is not arbitrary, capricious, or contrary to law.’” *Sierra Envtl. Servs.*, 1996 SBA8A LEXIS 15 at *33 (quoting *Matter of Tech Assistance Int'l. Inc.*, No. MSB-530, 1995 SBA8A LEXIS 49 at * 9 (Nov 8, 1995)).

VI. Conclusion

The United States Small Business Administration reasonably determined that Petitioner Forrester Developer, LLC, failed to prove by a preponderance of the evidence that its majority owner and managing member, Ms. Elizabeth L. Forrester, was socially disadvantaged within the meaning of 13 C.F.R. § 124.103. Therefore, the Small Business Administration's December 13,

2010 determination denying Forrester Developer, LLC, certification as a participant in the 8(a) Business Development program is NOT ARBITRARY, CAPRICIOUS, OR CONTRARY TO LAW. *See* 15 U.S.C. § 637(a)(9)(C); 13 C.F.R. § 134.406(b). The determination is upheld, and Forrester Developer, LLC's appeal is dismissed.

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

SPENCER T. NISSEN
Administrative Law Judge