

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

IN THE MATTER OF:

United Global Technologies, Inc.,

Petitioner

SBA No. BDPE-518

Decided: May 14, 2014

APPEARANCES

Liana Gonzalez, Esq., U.S. Small Business Administration, Office of General Counsel
Scotia Bank Plaza, Suite 510, 273 Ponce de Leon Avenue, San Juan, PR 00917, for the Small
Business Administration

Christopher R. Shiplett, Esq., Theodore P. Watson and Associates, LLC, 925 South
Niagara Street, Suite 600, Denver, CO 80224, for the Petitioner

FINAL DECISION AND ORDER

On January 30, 2014, United Global Technologies, Inc. (Petitioner or UG Tech) appealed a determination of the United States Small Business Administration (SBA or Agency) denying Petitioner admission to the 8(a) Business Development Program (8(a)BD Program).¹

I. Procedural History

On February 10, 2012, Petitioner applied for admission to the 8(a)BD Program. (AR Ex. 9).² On July 27, 2012, SBA denied Petitioner's application and informed Petitioner that Ms. Bernstein (the individual subject of application) was not considered to be socially or

¹ The purpose of the 8(a) Business Development Program “is to assist eligible small disadvantaged business concerns compete in the American economy through business development.” 13 C.F.R. § 124.1. To qualify for admission into the Program, an applicant small business must be “unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of and residing in the United States, and which demonstrates potential for success.” 13 C.F.R. § 124.101

² Citations referencing the Administrative Record are as follows: Administrative Record followed by Exhibit Number (AR Ex. at ____).

economically disadvantaged due to gender pursuant to 13 C.F.R. § 124.103. (AR Ex. 8). On August 29, 2012, Petitioner filed a timely request for reconsideration. (AR Ex. 7). On January 17, 2013, SBA again denied Petitioner's application based upon: 1) the previous determination that Ms. Bernstein was not considered socially or economically disadvantaged, and 2) that outstanding liens and judgments existed which reflects poorly on her business judgment. *See* 13 C.F.R. § 124.108 and AR Ex. 5.

On February 28, 2013, Petitioner filed a Notice of Appeal with the Office of Hearings and Appeals (OHA), and the matter was assigned to the Hon. George J. Jordan, Administrative Law Judge (ALJ). However, the Agency, during the course of its investigation, determined that it should withdraw its determination of January 17, 2013 and the parties agreed to dismiss the Appeal. (AR Ex. 4). Judge Jordan granted the Agency's Motion to Dismiss on April 16, 2013. (AR Ex. 3). On December 16, 2013, SBA again denied Petitioner admission to the 8(a)BD Program. (AR Ex. 1). The letter informed Petitioner that SBA determined Ms. Bernstein, the individual upon whom eligibility was based, was not disadvantaged pursuant to 13 C.F.R. § 124.103. *Id.*

Thereafter, on January 30, 2014, Petitioner filed a timely appeal of the decision by SBA. *See* 13 C.F.R. § 134.202(a). On February 4, 2014, SBA's OHA again issued a Notice of Assignment assigning the matter to the United States Coast Guard (USCG), Office of Administrative Law Judges.

On February 10, 2014, the Docketing Center assigned this matter to the undersigned ALJ for adjudication. On March 14, 2014, SBA filed its Response to Appeal Petition and a copy of the Administrative Record.³ 13 C.F.R. § 134.406(c)(1). Petitioner did not object as to the completeness of the record. *See* 13 C.F.R. § 134.406(c)(2). Accordingly, on March 28, 2014, the undersigned issued an Order Closing Administrative Record and this matter is now ripe for decision. *See* 13 C.F.R. § 134.406(c)(2).

II. Discussion

A. Jurisdiction

The proceeding arises under 15 U.S.C. § 637(a)(9), Section 8(a) of the Small Business Act, and is governed by the procedural rules governing cases before the Office of Hearings and Appeals found in 13 C.F.R. Part 134. The Office of Hearings and Appeals have the authority to conduct proceedings on appeals from “[d]enial of a program admission based solely on negative

³ . The Administrative Record contained three (3) exhibits for which the Agency claimed evidentiary privileges and submitted a *Vaughn* index; unredacted copies were provided to the undersigned. 13 C.F.R. § 134.206(b)(4). Petitioner did not object as to the claimed privileges. The undersigned finds that exhibits 2, 6, and 10 were properly withheld pursuant to the deliberative process privilege. *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975). Exhibits 2, 6, and 10 were properly withheld, as they constitute privileged legal opinions. *See Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981).

findings as to social disadvantage. . . .” 13 C.F.R. § 134.1020(j)(1). An applicant may appeal a denial of admission to the 8(a)BD Program to OHA pursuant to 13 C.F.R. §§ 124.206 and 134.102.

Pursuant to an Interagency Agreement with SBA, the USCG Office of Administrative Law Judges provides judicial services to the extent required under the regulations. Thus, OHA and the undersigned have jurisdiction over Petitioner's Appeal.

B. Standard of Review

Pursuant to 13 C.F.R. § 134.406(b), an ALJ's review is limited to determining whether SBA's determination was arbitrary, capricious, or contrary to law. As long as SBA's determination is reasonable, the ALJ must uphold it on appeal. *Id.* An Agency's decision is unreasonable if it constitutes a clear error of judgment. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983). “The SBA makes a clear error of judgment if it (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 between the judge's views and those of the SBA.” *Unicorn, Inc.*, SBA No. BDP-428 (2012) (*internal citations omitted*).

C. Social Disadvantage

An applicant's business concerns meets the requirements for admission to the 8(a)BD Program when it qualifies as a small business that “is unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of and residing in the United States, and which demonstrates potential for success.” 13 C.F.R. § 124.101.

Socially disadvantaged individuals are defined as “those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities.” 13 C.F.R. § 124.103(a). There is a rebuttable presumption that members of certain groups are socially disadvantaged. 13 C.F.R. § 124.103(b). Individuals who are not members of the enumerated groups must establish social disadvantage by a preponderance of the evidence. 13 C.F.R. § 124.103(c)(1).

Any evidence of social disadvantage must include the following elements:

- (i) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;
- (ii) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(iii) Negative impact on entry into or advancement in the business world because of the disadvantage. SBA will consider any relevant evidence in assessing this element. In every case, however, SBA will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

13 C.F.R. § 124.103(c)(2)(i-iii).

Evidence of substantial and chronic social disadvantage is generally established if the applicant adequately describes “more than one or two specific, significant incidents.” However, one incident may be sufficient if it is so substantial that there is no doubt the applicant suffered social disadvantage. *Matter of Boblits Services, LLC*, SBA No. BDPE-480 (2013) (citing *Matter of Ace Technical, LLC*, SBA No. SDBA-178 (2008)).

D. Petitioner's Argument

In the Appeal, Petitioner argues the sole issue is whether Ms. Bernstein, the individual upon whom 8(a)BD Program eligibility is based, is socially disadvantaged. To demonstrate social disadvantage, Ms. Bernstein must provide evidence of: (1) an “objective distinguishing feature that has contributed to social disadvantage”; (2) personal experiences of “substantial and chronic” social disadvantage; and (3) “[n]egative impact on entry into or advancement in the business world because of the disadvantage.” 13 C.F.R. § 124.103(c)(2)(i-iii). Petitioner asserts SBA erroneously determined Ms. Bernstein has not sufficiently demonstrated the three elements.

Petitioner contends Ms. Bernstein provided sufficient evidence of discrimination she faced in the areas of employment history, and business history as a result of her gender. While not claiming gender bias in the area of education history, Ms. Bernstein does claim some of her difficulties in the business environment were caused by her attendance at an all women's college. Petitioner claims SBA improperly dismissed Ms. Bernstein's assertions.

For instance, Ms Bernstein provided evidence of being socially disadvantaged at Bank of America (BOA), as well as evidence of a gender discrimination lawsuit against BOA. While SBA determined the evidence regarding these incidents lacked adequate detail, Petitioner, citing *Informed Decision Services, Inc.*, SBA No. 518 (1995), argues UG Tech provided sufficient evidence and detail regarding the incidents, and the Agency grossly misrepresented the evidence, thereby arbitrarily and capriciously deciding against Petitioner's inclusion in the Program. Petitioner suggests that, pursuant to *Matter of Southern Aire*, SBA No. BDP-453 (2012), Ms. Bernstein need only describe (1) when and where the incident occurred, (2) who was involved, (3) how the incident occurred, and (4) how the owner was adversely affected by the incident. In rejecting Petitioner's evidence, SBA improperly required Petitioner to establish bias with clear and convincing evidence and erroneously speculated as to what occurred during the incidents.

Petitioner also states Ms. Bernstein provided credible evidence of gender discrimination while employed at Intermedia. She reported a wide pay disparity between her and her male

counterparts and blatant sexual harassment. Petitioner also alleges the Agency improperly dismissed this evidence by requiring corroboration contrary to *Wororco Int'l*, SBA No. BDP-174.

Furthermore, while at Robert Half International, Petitioner claims Ms. Bernstein provided reliable and credible evidence of gender bias resulting in social disadvantage by not receiving her promised pay raise in three to four months. Petitioner also claims that Ms. Bernstein was passed over for promotions for less experienced male colleagues. By not accepting Petitioner's assertions that she was denied promotions and pay increases, the Agency ignored its own regulations, and cited to 13 C.F.R. §§ 406(a) and 407. making the Agency's decision arbitrary and capricious.

Next, while employed by Wyeth Pharmaceuticals, Petitioner claims Ms. Bernstein provided reliable and credible evidence of gender bias because she accepted a position for lesser money than she wanted. By taking a position with Wyeth, at a lower pay than she wanted, Petitioner claims Ms. Bernstein suffered gender discrimination because pay negotiations start lower with women job applicants, and therefore, were not made in good faith. Petitioner feels the Agency's claims relating to Ms. Bernstein being a substandard negotiator are ridiculous, arbitrary and capricious.

Lastly, Petitioner claims Ms. Bernstein established by reliable and credible evidence that she suffered a pattern of chronic and substantial disadvantage by detailing her experience trying to obtain a contract at Fort Gordon. Terry Lucas, a contracting expert, told Ms. Bernstein she should partner with a male owned business to contract with the Department of Defense. Ms. Bernstein indicated she was told that women owned businesses do not receive prime contract work. By finding the statements lacked specificity, the Agency's decision was arbitrary and capricious.

E. Agency's Argument

In the March 14, 2014 Answer, SBA summarizes the requisite elements for entry into the 8(a)BD Program, silently conceding UG Tech satisfied the first element, namely, that Ms. Bernstein has an objective distinguishing feature allegedly contributing to social disadvantage (gender). *See* 13 C.F.R. § 124.103(c)(2)(i). However, SBA contends Petitioner has not demonstrated the latter two elements.

As to the second element, personal experiences of substantial and chronic social disadvantage, SBA asserts Petitioner failed to provide “sufficient evidence of a specific and persuasive nature to establish social disadvantage”; and that “[a]lthough Petitioner asserts that the incidents experienced by Ms. Bernstein demonstrate discrimination against her, Petitioner fails to provide sufficient detail to be persuasive” Further, Petitioner failed to “establish [[her] social disadvantage by a preponderance of the evidence.” Petitioner was unable to show how the incidents claimed caused a negative impact on Ms. Bernstein.

Finally, the Agency claims Petitioner failed to illustrate the additional requirement that the incidents, when taken together, constitute chronic and substantial discrimination. The Agency

relies on its letter of denial dated July 27, 2012 and reconsideration of December 16, 2013, to provide greater specificity to its claim that the record supports the Agency's decision to deny Petitioner's entry into the 8(a)BD Program. *See* Agency Attachments.

F. Analysis

In the instant case, SBA's Answer summarizes the legal requirements for 8(a)BD Program admission and generally concludes that the Administrative Record support SBA's analysis and determination that Petitioner is ineligible for certification under the 8(a)BD Program. However, the December 16, 2013 letter provides greater specificity as to SBA's rationale for denying UG Tech's admission to the Program. The seven page letter explains why SBA determined Petitioner did not provided sufficient information to demonstrate the social disadvantage requirements of the 8(a)BD Program based on a preponderance of the evidence. The letter summarized SBA's rationale in finding Petitioner had not met Program requirements through evidence provided related to education, employment, and business history.

1. Education

Ms. Bernstein did not allege any gender discrimination as related to education; however, she did allege gender discrimination in some of her claims in the area of employment history. She asserts the negative connotations associated with her attendance and graduation from an all women's college, however, did contribute to her employment discrimination

a. Generally Related to Employment

In the area of employment, Ms. Bernstein attempts to show when interviewers at both BOA and Wyeth learned of her attendance at Meredith College, an all women's college, they made comments minimizing her educational accomplishments. Starring with her initial interview with James Morgan at BOA, and later with an unknown interviewer at Wyeth, she was made to feel uncomfortable with jokes or disparaging comments about her education. Certainly, if comments as alleged were made, this is improper. However, in regards to the claimed gender discrimination at both BOA and Wyeth, the Agency was unable to determine that these comments negatively impacted Ms. Bernstein's entry into the employment world.

As admitted by Ms. Bernstein, she obtained the positions she applied for at each company. It is difficult to ascertain any nexus between the comments by either interviewer and Ms Bernstein's entry into employment. Therefore, the undersigned is unable to find that the decision by the Agency was arbitrary or capricious.

In other cited examples of Ms. Bernstein suffering gender discrimination as a result of her attendance at Meredith, she cites to disparaging comments made in two other circumstances, one while she was attempting to gain a new account at BASE International in Charlotte, North Carolina (April 2001) and again at a meeting at Hartness in May 2009. While perhaps showing a lack of understanding as to the value of a degree earned at Meredith, the Agency found no nexus between the comments and the lack of winning the contract with BASE or any negative results from the inquiry by John Hart. The Agency found the information regarding the BASE contract

do not include qualifications of Ms. Bernstein's company, how Ms Bernstein's company was otherwise qualified to perform the contract, who the winning bidder was, who the commenter was that made the disparaging statement, and what that person's authority was to award or not award the contract; all as being without the required specificity needed.

It does not appear to the undersigned SBA's conclusion was arbitrary or capricious. Likewise, with the inquiry by John Hart, while it shows a general lack of knowledge concerning Meredith College, the Agency found Petitioner failed to show any nexus between the comment and any employment disadvantage she may have suffered. It does not appear that without a discernible nexus to negative employment consequences the Agency's finding was arbitrary or capricious.

b. Bank of America

In Petitioner's statement of appeal, Petitioner strongly asserts the Agency viewed the claims of Ms. Bernstein with a general air of skepticism, especially relating to her allegations of unequal pay for performing substantially the same work as a male coworker at BOA. However, the Agency pointed out Ms. Bernstein alleged male co-workers were similarly situated as she was, but then, stated "Mr. Phibbs' history was not the same as mine" (request for reconsideration dated August 29, 2012, page 5). The Agency concluded there was insufficient information to determine the relative differences between Mr. Phibbs and Ms. Bernstein professionally gender bias as the cause of the pay difference. Without specific, detailed information concerning the status of Mr. Phibbs, as compared to Ms. Bernstein, the undersigned cannot find, under the standard imposed, that it was capricious or arbitrary for the Agency to conclude that such inconsistency and lack of specificity merited denial.

Secondly, evidence of lawsuits, of which Ms. Bernstein was not a party to, was concluded by the Agency as not demonstrating a nexus between Ms. Bernstein and BOA. Again, it does not appear to the undersigned that such a conclusion was arbitrary or capricious. Without some indication of how Ms. Bernstein was directly affected by the allegations in the lawsuit, without a judicial finding as to Ms. Bernstein being adversely affected, and without even knowing the substance of the lawsuit, the undersigned cannot overrule the Agency's conclusion as being arbitrary.

c. Intermedia

Petitioner states during Ms. Bernstein's time at Intermedia, she was told to dress provocatively and to take certain patrons to bars and establishments featuring nude dancing. Further, it is alleged that women employees at Intermedia were given pet names. While Ms. Bernstein does not have to allege or prove gender discrimination, she must prove she was negatively affected by the incidents. *Seacoast Asphalt Servs, Inc.*, SBA No. SDBA 151 (2001).

Ms. Bernstein alleges sexism was rampant, and that she was denied training opportunities for technical classes, as well as, the opportunity to attend golf outings so she could network. However, she never established a nexus between the acts complained of and being denied training. The Agency points out that Ms. Bernstein worked in the sales field, and technical

training may be beneficial. But, Ms. Bernstein failed to demonstrate with specificity why she was denied training, such as the fact that technical training was offered to sales personnel, what the criteria was to qualify for training, and how she qualified for advanced training but yet was denied. Contrarily, Ms. Bernstein may not have been able to detail how these actions as listed above adversely impacted her, as her resume indicates she was given awards, promotions, and exceeded sales quotas by 200%. Ms. Bernstein's statements are conclusory, and without the added specificity as noted by the Agency, a decision to deny her 8a status on this experience cannot be said to be arbitrary and capricious.

d. Robert Half International

Another example Petitioner gives of Ms. Bernstein's employment discrimination is an experience at Robert Half International, in which she was passed over for advancement and paid less than her male counterparts. A letter of support from Ms-Leslie Muller was submitted as evidence. However, the Agency found that Ms. Bernstein's narrative was contradicted in her own resume. It was not arbitrary or capricious for the Agency to note the contradiction, and to reasonably conclude that without additional specificity, the evidence of employment disadvantage was not proven. Ms. Muller's letter of support was conclusory and lacked specificity as to who the selected gentleman, his pay grade, and his qualifications as opposed to Ms. Bernstein. Further, Ms. Muller's letter of support indicates facts directly contradicted by the resume of Ms. Bernstein. Statements that are contradictory or lack specificity need not be credited by the Agency when formulating a decision to admission to the 8(a)BD Program. *Matter of Toolson Enterprises, Inc.*, SBA No. SDBA 139 (2000).

Ms. Bernstein further pointed out her difficulties with her manager Mr. Webber when she complained about her unequal treatment. Ultimately, she claims she was fired but then Ms. Bernstein offers that she was given the opportunity to return, at a higher level, and declined the position. The Agency determined not unreasonably, there was insufficient specificity to determine what, if anything, was the motivating factor in the termination. In fact, Petitioner's brief on appeal concedes as much stating that there was nothing to indicate what Mr. Webber meant when he stated there would be consequences if Ms. Bernstein pursued this matter. Rather, Ms. Bernstein's statement indicates the subject of gender inequality was not discussed during her final meeting with Supervisor Bill Driscoll. Therefore, the Agency could reasonably conclude Ms. Bernstein's narrative lacked the requisite specificity needed to support her position, and the undersigned may not find SBA's interpretation arbitrary or capricious simply because it differs from Petitioner's..

e. Wyeth Pharmaceuticals

Petitioner claims Ms. Bernstein was underpaid when she accepted her position. Ms. Bernstein states that because of her gender she was forced to accept a position that paid her less than she deserved. The Agency noted Ms. Bernstein's resume indicated she was recruited by the district manager to improve sales in an underperforming region. Ms. Bernstein's argument seems to be that even though she was recruited, it may have been with the knowledge that she would accept less money to work for Wyeth. The Agency reasonably found that the allegations of Ms. Bernstein failed to specifically address why she felt she was gender targeted to accept less

money. Her statement that she made less money than her male counterparts is similarly without specificity. There is no identification of the other individuals, such as name, rate of pay, or jobs performed. Ms. Bernstein does not give her reimbursement schedule to show that there was, or was not, a sales incentive. Without the necessary specificity, the undersigned cannot find the Agency's decision to be arbitrary or capricious.

Ms. Bernstein further claims Wyeth denied her requests for training. However, as it is noted on her resume. Ms. Bernstein indicated that she had completed numerous advanced training sales classes throughout the country. This statement as to the unavailability of training is contrary to evidence contained in the file. Without specific explanation, the Agency is not forced to accept Ms. Bernstein's statements at face value, but can reasonably draw contrary conclusions from such inconsistent evidence. *Matter of Seacoast Asphalt Services*, SBA No. SDBA -151. The undersigned cannot find the decision of the Agency to deny Petitioner's claim is either arbitrary or capricious. With regards to employment, SBA takes into account "such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer; and social patterns or pressures which have channeled the individual into nonprofessional or non-business fields." 13 C.F.R. § 124.103(c)(2)(iii)(B).

Based on the standard of review the undersigned must employ, it was not unreasonable for SBA to conclude Ms. Bernstein failed to sufficiently demonstrate personal experiences of substantial and chronic social disadvantage and a negative impact on entry into or advancement in the business world because of her employment experiences. 13 C.F.R. § 134.406(b).

As to Ms Bernstein's employment history, SBA again (1) addressed the evidence submitted; (2) informed the applicant of the facts relied upon in reaching the conclusion; and (3) clearly stated a reasonable rationale for the conclusion. *See Matter of Ace Technical. LLC*, SBA No. SBDA-178 (2008).

As noted by SBA, many of Ms. Bernstein's statements are speculative or lack specificity. Similarly, the affidavits and letters provided by Ms. Bernstein's friends and coworkers merely conclude Ms. Bernstein was subject to gender bias absent specificity as to how or when the bias occurred. *See In the Matter of Bitstreams, Inc.*, SBA No. BDP-122 (1999) (citing *Matter of Sierra Environmental Services*. SBA No. 550 (1996) (explaining "[s]tatements merely characterizing conduct as abusive, derogatory, disparaging or discriminatory do not provide sufficient information about the underlying acts to permit the SBA to find the applicant established the social disadvantage claim.")).

2. Business History

Ms. Bernstein's narrative included two examples of alleged discrimination throughout her business history with her attempts to obtain contract work with the U.S. Government. In her initial narrative, Ms. Bernstein cites to making many phone calls to Camp Lejeune in an attempt to acquire their IT business. She relates that she was told "they honestly don't look at going the woman owned route." The Agency determined this statement contained insufficient specifics to determine who she called.

In Ms. Bernstein's request for reconsideration, she indicates she was told by Josephius Rozier that Camp Lejeune had no set aside for a woman owned business, but did have for other programs such as a disabled veteran owned business or 8a qualifying businesses. She states that she felt as if she was discriminated against and the Agency not unreasonably concluded that lack of set aside programs do not constitute gender bias. There was no indication Petitioner was prevented from bidding on other contracts, the authority of Josephius Rozier to grant or deny contracts, and any mention that as a woman owned business Petitioner was disqualified to bid. In fact, just the opposite was told to her, there were no specific set asides for IT or engineering services and that she could consider partnering and biddings for contracts. As a business decision, Petitioner decided against this route. This conversation is directly contradictory to Ms. Bernstein's initial personal eligibility statement (PES), whereby she indicated she was told the base would not consider a woman owned business. Therefore, the Agency to not allow Program eligibility on the incident, cannot be said to be arbitrary and capricious.

In her second example, Ms. Bernstein states in her initial submission she visited Shaw Air Force Base and was told "they don't look at a woman owned business as an option for them." Again, the Agency reasonable found this statement to lack the specific details needed to support a finding of business disadvantage. In her request for reconsideration, Ms. Bernstein indicates she met with Mr. Ron Alexander, a procurement officer at Shaw Air Force Base. Apparently, this was a one-on-one meeting. She was told Shaw had 8a set asides and occasional open competition, but again, Petitioner felt it could not adequately bid competitively and decided not to compete. Again, the Agency did not unreasonably conclude anyone, in any capacity, engaged in gender discrimination. In fact, her request for reconsideration was directly contrary to the incident as initially described. The Agency is not obligated to accept contrary information on face value. *Matter of Seacoast, supra*. Therefore, the undersigned cannot say SBA was arbitrary or capricious in its decision.

Finally, Ms. Bernstein brings her experience at Fort Gordon. She claims she was advised that Fort Gordon did not have women owned business set asides, but did use 8a set asides. She was also apprised of contracting vehicles, which she might want to use, including full and open bidding. Without more, the Agency was not unreasonable in concluding that a lack of set asides fail to establish gender discrimination. She claims in her initial application to have spoken with a Terry Lucas regarding her options, then in Ms. Bernstein's request for reconsideration, she speaks of a "Ms. Wells" with whom she had the same conversation with. There is no explanation for the inconsistency, and it was reasonable for the Agency to discount the information submitted by Petitioner.

With regards to business history, "SBA considers such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations." 13 C.F.R. § 124.103(c)(2)(iii)(C).

After thoroughly examining the record, SBA determined that, based on the totality of the evidence presented, Petitioner did not demonstrate social disadvantage by a preponderance of the

evidence. 13 C.F.R. § 124.103(c)(2)(iii). *See Matter of Alabasi Construction, Inc.*, SBA No. BDP-368 (2010).

While Petitioner is not required to cite examples in all of the three areas in order to demonstrate social disadvantage, the undersigned nonetheless finds SBA's determination reasonable. *Matter of Bitstreams, Inc.*, SBA No. BPP-122 (1999). SBA did not, as alleged, raise the bar to clear and convincing evidence.

As discussed, the review of the administrative record is narrow; the undersigned may not substitute his own judgment for that of the SBA. 13 C.F.R. § 134.406(b). *See Matter of Spectrum Contracting Services, Inc.*, SBA No. BDP-378 (2010). Nor may the undersigned review the record de novo to decide whether SBA's ultimate conclusions are correct. *See Matter of Ace Technical, LLC*, SBA No. SDBA-178 (2008). Rather, the undersigned must determine only whether SBA's determination is reasonable and supported by the administrative record. *Id.*

Here, SBA addressed the evidence contained in the administrative record and provided a rational explanation for its conclusions, articulating the facts it relied on in determining Petitioner failed to demonstrate social disadvantage. *See Matter of Ace Technical, LLC*, SBA No. SDBA-178 (2008). Accordingly, the undersigned finds SBA's decision denying UG Tech admission to the Program was not arbitrary, capricious, or contrary to law. 13 C.F.R. § 134.406(b).

ORDER

WHEREFORE,

IT IS HEREBY ORDERED THAT Petitioners Appeal is **DENIED** and SBA's Determination is **AFFIRMED**.

THE PARTIES ARE HEREBY NOTIFIED THAT, subject to 13 C.F.R. § 134.409(c), this is the final decision of the Small Business Administration. 13 C.F.R. § 134.409(a).

Done and dated this 14th day of May, 2014, at Galveston, Texas

DEAN C. METRY
Administrative Law Judge