

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

IN THE MATTER OF:

Cabin John Consulting Corp.,

Petitioner

SBA No. BDPE-521

Decided: May 19, 2014

DECISION AND ORDER

On December 17, 2013, Cabin John Consulting Corp. (“Petitioner”) appealed a determination of the Small Business Administration (“SBA” or the “Agency”) denying Petitioner admission into the 8(a) Business Development Program (“8(a) BD Program”). *See* 13 C.F.R. parts 124, 134. The *Appeal Petition* contends that the SBA erroneously concluded that Petitioner's owner, Mr. Ren Shan, was not economically disadvantaged. The Agency filed its *Answer to the Appeal Petition* on January 31, 2014. The case is now before this Court, pursuant to 13 C.F.R. §§ 124.206(a) and 134.102(j)(1), to determine whether the Agency's decision was arbitrary, capricious, or contrary to law.<sup>1</sup>

I. Procedural History

On June 3, 2013, Petitioner filed its initial application for admission into the 8(a) BD Program. After significant back and forth between Petitioner and the SBA, the Agency denied the application on September 27, 2013. The denial was based on three grounds: (1) Mr. Shan's net worth exceeded the \$250,000 regulatory limit; (2) Petitioner had not been in business for the required two-year period; and (3) Petitioner did not show reasonable prospects of success in the 8(a) BD Program.

On November 13, 2013, Petitioner sought reconsideration of the denial, and provided additional information including revised financial information for Mr. Shan and his wife. On December 11, 2013, the SBA issued a Reconsideration Determination Letter (“Recon Determination Letter”) finding that the second and third bases for denial had been resolved. However, it again denied Petitioner's application because Mr. Shan's net worth still exceeded regulatory limits. The *Appeal Petition* followed soon after.

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<sup>1</sup> Pursuant to an Interagency Agreement in effect beginning October 1, 2012, Administrative Law Judges of the U.S. Department of Housing and Urban Development are authorized to hear cases for the U.S. Small Business Administration.

## II. Program Eligibility Requirements

To gain entry into the 8(a) BD Program, a business entity must be unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of “good character,” are citizens of the United States, and who can demonstrate the potential for business success. 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.” 13 C.F.R. § 124.103(a). An economically disadvantaged individual is a socially disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to non-socially disadvantaged competitors in the same or similar line of business. 13 C.F.R. § 124.104(a).

When determining economic disadvantage, the SBA considers the personal financial condition of the person claiming disadvantaged status, including income from the past three years, personal net worth, and the fair market value of all assets. 13 C.F.R. § 124.104(c). An individual with a personal net worth of more than \$250,000 is not considered economically disadvantaged. 13 C.F.R. § 124.104(c)(2). When calculating net worth, the SBA excludes the ownership percentage in the applicant company, and the equity in the owner's primary personal residence. *Id.* Funds invested in an official retirement account are also excluded from the net worth calculation, as is income from the applicant company that is reinvested in the company or used to pay the company's normal taxes. 13 C.F.R. § 124.104(c)(2)(ii)-(iii).

## III. Standard of Review

An SBA determination may be overturned only if the reviewing court concludes (1) that the administrative record is complete; and (2) based upon the entire administrative record, the Agency determination was arbitrary, capricious, or contrary to law. 13 C.F.R. §§ 134.402, 134.406(a)-(b); 5 U.S.C. § 706(A)(2). The court may only consider information contained in the written administrative record. 13 C.F.R. § 134.406(a). Therefore, the administrative record must be complete before the Court may determine whether it supports the SBA's ultimate conclusion.

In determining whether the administrative record is complete, a court considers whether the Agency (1) adequately examined all relevant evidence; (2) arrived at its conclusion using only those facts contained in the administrative record; and (3) articulated an explanation for its conclusion that is rationally connected to the facts found in the record. *Burlington Truck Lines. v. United States*, 371 U.S. 156,168 (1962); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29 at 43 (1983). If the Agency's decision fails to address these factors, the record is considered incomplete and the case may be remanded to the Agency for a new initial determination. *DK Environmental*, SBA No. BDPE-481. The Court may also remand a decision if it is “clearly apparent from the record” that the Agency committed a mistake of fact or law. 13 C.F.R. § 134.406(e)(2); *see also Innovet*, SBA No. BDP-466.

If the administrative record is deemed to be complete, the reviewing court proceeds with its review to ensure that the Agency decision was not arbitrary, capricious or contrary to law. The reviewing court's task is to decide whether the Agency reached a reasonable conclusion in

light of the facts available in the administrative record. It does not ask whether the conclusion was the “best” one, or even a correct one. *State Farm*, 463 U.S. 29; *Griffis v. Delta Family-Care Disability*, 723 F.2d 822, 825 (11th Cir. 1984) (“This court's judicial role is limited to determining whether the [agency's] interpretation was made rationally and in good faith—not whether it was right.”); *Ace Technical*, SBA No. SDBA-178, at 3 (“[Examination] is not a *de novo* review of the administrative record to decide whether the SBA's ultimate conclusions are correct.”). Any reasonable conclusion must be upheld, even if it differs from the conclusion the reviewing court would have reached. *State Farm*, 463 U.S. at 42-43; *Citizens to Preserve Overton Park, Inc. v. Voice*, 401 U.S. 402, 416 (1971); 13 C.F.R. § 134.406(b).

The Agency's conclusion is unreasonable, and thus arbitrary and capricious, if it constitutes a “clear error of judgment.” *State Farm*, 463 U.S. at 43; *McMahon Builders*, SBA No. BDPE-461 (2013). Such error occurs if the Agency (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 decision that runs counter to the evidence; or (4) offers an explanation that is so implausible that it cannot be ascribed to a mere difference in view between the Agency and the Court. *McMahon Builders*, SBA No. BDPE-461, at 4.

#### IV. The Agency's Determination

Petitioner contends that the SBA correctly calculated Mr. Shan's allowable exclusions, but erroneously deducted them from Mr. Shan's total assets instead of his unadjusted net worth. As a result, Petitioner argues, Mr. Shan's adjusted net worth is actually \$129,218, rather than \$329,207, as the SBA concluded.

This argument is purely mathematical. When Petitioner sought reconsideration, it also filed SBA Form 413 — a Personal Financial Statement for Mr. Shan (“the November Form 413” or “the Form 413”). The Form 413 included an itemized breakdown of Mr. Shan's assets and liabilities. Among his \$684,205 in assets was \$130,554 in an IRA; \$40,414 in stocks and bonds from Petitioner; and \$304,030 in real estate holdings. The real estate figure consists of the present market value of Mr. Shan's primary residence (\$184,030) and a condo (\$120,000). SBA regulations allow Petitioner to exclude retirement income, ownership interest in the applicant company, and equity in the primary residence from the net worth calculation. 13 C.F.R. § 124.104(c)(2). The Recon Determination Letter stated that the SBA “[I]n accordance with 8(a) BD Program regulations . . . removed your unavailable IRA, your equity interest in the applicant firm and your primary residence present value” from Mr. Shan's assets, for a total of \$354,998 in excludable assets.

The only liability listed on the Form 413 is the \$199,989<sup>2</sup> mortgage on Mr. Shan's

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<sup>2</sup> There is some confusion in the actual figures due to an apparent typographical error in the November Form 413. Mr. Shan listed \$199,889 under “Mortgages and Real Estate” in his “Liabilities” section. However, the amount listed under “Total Liabilities” in that same section is \$199,989, the same total listed in a previously filed Form 413 (“the July Form 413”). The mortgage balance noted in Section 4 of the form also states \$199,989. Using the July Form 413, the SBA's Initial Determination Letter used the \$199,989 figure. The Recon Determination

primary residence. The SBA explained in the Recon Determination Letter that “the entire primary residence mortgage amount was removed from consideration leaving no other personal liabilities to offset the remaining includable personal assets.” With \$354,998 deducted from the assets side of the ledger, and nothing remaining under liabilities, the SBA concluded that Mr. Shan's total adjusted net worth was \$329,207. Although Petitioner believes the deduction should have been made to Mr. Shan's total net worth rather than his total assets, it has offered no evidence or precedent requiring that the calculation be made this way. Thus, there is no showing that the SBA's approach was unreasonable.

### CONCLUSION

The Recon Determination Letter fully explained the process and methods used to arrive at its determination, and it based that determination entirely upon evidence that was properly included in the Administrative Record. For the foregoing reasons, the Court finds that the SBA's determination denying Cabin John Consulting Corp., admission into the 8(a) BD Program was not arbitrary, capricious, or contrary to law. Accordingly, the Determination is **AFFIRMED**.

**So ORDERED.**

J. JEREMIAH MAHONEY  
Administrative Law Judge

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Letter, however, used the \$199,889 figure from the November Form 413. The actual mortgage balance at the time was \$199,989, derived from Mr. Shan's actual home mortgage (\$123,254) and a home equity line of credit (\$76,735). In any event, the \$100 difference has no bearing upon the outcome in this case.