

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

IN THE MATTER OF:

Cornerstone Construction Services, Inc.,

Petitioner

SBA No. BDPE-540

Decided: December 29, 2014

DECISION

On September 29, 2014, Amadita Stone, as owner of Cornerstone Construction Services, Inc. (“Petitioner”), appealed a determination of the Small Business Administration (“the SBA”) in which the SBA denied Petitioner admission into the 8(a) Business Development Program (“8(a) BD Program”) after concluding that Mrs. Stone was not economically disadvantaged. The SBA filed a *Response* and an Administrative Record on November 5, 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 SBA's decision was arbitrary, capricious, or contrary to law.

I. Procedural History

Petitioner first applied for entry into the 8(a) BD Program on November 21, 2013. The SBA denied the application on March 28, 2014, on four grounds, including a failure to show economic disadvantage. Petitioner filed a Request for Reconsideration (“Recon Request”) on May 14, 2014, and submitted additional information responding to the grounds cited in the Initial Determination Letter. On August 15, 2014, the SBA issued a Determination Letter upon Reconsideration (“Recon Determination Letter”) that again found that Mrs. Stone was not economically disadvantaged. A timely *Appeal Petition* followed. On October 1, 2014, the matter was transferred to this Court pursuant to 13 C.F.R. § 134.218(a).<sup>1</sup>

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.

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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.

§ 124.103(a). There is a rebuttable presumption that members of specific racial and ethnic groups are socially disadvantaged.<sup>2</sup> 13 C.F.R. § 123.103(b).

An economically disadvantaged individual is any socially disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished access to capital and credit, as compared to a non-socially disadvantaged individual in the same or similar line of business. 13 C.F.R. § 124.104(a). Access to capital and credit is determined by considering a range of factors, including income for the past three years, personal net worth, and the total fair market value of the applicant's assets. 13 C.F.R. § 124.104(c). An individual with a net worth of more than \$250,000 or with total assets in excess of \$4 million is not considered economically disadvantaged. 13 C.F.R. § 124.104(c)(2), (c)(4). When determining net worth, the SBA does not include the owner's interest in the applicant company, the equity in his or her primary personal residence, or the value of any official retirement accounts. 13 C.F.R. § 124.104(c)(2). Fair market value of assets includes the value of the applicant company and the value of the primary residence, but excludes retirement accounts. 13 C.F.R. § 124.104(c)(4).

### 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 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). Consequently, the administrative record must be complete before the Court may decide whether it supports the SBA's ultimate conclusion.

In determining whether the administrative record is complete, a court considers whether the SBA (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 decision fails to address these factors, the record is considered incomplete and the case may be remanded 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 decision was marred by a mistake of fact or law. 13 C.F.R. § 134.406(e)(2); *see also, Innovet. Inc.*, SBA No. BDP-466 (2013).

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

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<sup>2</sup> Those groups are “Black Americans; Hispanic Americans; Native Americans (Alaska Natives, Native Hawaiians, or enrolled members of a Federally or State recognized Indian Tribe); Asian Pacific Americans; and members of other groups designated from time to time by SBA. . . .” 13 C.F.R. § 124.103(b)(1).

*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. p. 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. Volpe*, 401 U.S. 402, 416 (1971); 13 C.F.R. § 134.406(b).

The SBA'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 SBA (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 decisionmaker and the Court. *McMahon Builders*, at 4.

#### IV. Discussion

Petitioner asks the Court to review the SBA's Recon Determination Letter, set aside that decision, and find that Petitioner should be admitted into the 8(a) BD Program. After a careful review of Petitioner's initial 8(a) BD Program application, the Initial Determination Letter, the Request for Reconsideration (“Recon Request”), the Recon Determination Letter, and the Administrative Record as a whole, the Court finds that the SBA examined all relevant evidence and provided a comprehensive explanation for its conclusions. The denial of Petitioner's entry into the 8(a) BD Program was therefore not arbitrary, capricious, or contrary to law.

The *Appeal Petition* raises only one significant point of contention: that the SBA's treatment of a \$138,000 loan was inaccurate and unreasonable. The loan in question was a personal loan from Mrs. Stone to Petitioner, apparently intended to provide short-term working capital for the business. The loan appears on Petitioner's SBA Form 413 as an asset under “Accounts and Notes Receivable” and as a liability under “Notes Payable to Bank and Others.” The Recon Determination Letter noted that the \$138,000 is a home equity line of credit drawn against her personal primary residence. The SBA thus deleted that sum from the “Notes Payable” category and added it to the “Mortgages on Real Estate” category. As a result, the equity in Mrs. Stone's residence was reduced from \$402,463 to \$264,463. This adjustment pushed Mrs. Stone past the \$250,000 personal net worth ceiling.

Petitioner contends that the SBA erred by counting the \$138,000 as an asset “while disregarding the corresponding debt.” It further states that the SBA's “manipulation of the figures . . . contradict all standard accounting principles.” The SBA counters that it did not remove the \$138,000 as a liability. Rather, it treated the home equity loan as a second mortgage on the primary residence. Accordingly, it included both mortgages as liabilities, and subtracted them from Mrs. Stone's share of the present market value of the residence, thus arriving at her equity amount. Equity in a primary personal residence is excluded from the net worth calculation. 13 C.F.R. § 124.104(c)(2). Essentially, the SBA argues that the home equity loan “merely reduced Mrs. Stone's equity in her personal residence.”

This conflict is almost identical to one raised in a recent 8(a) BD Program appeal. In *Ironwood Commercial Builders, Inc.*, this Court remanded a denial determination due in part to the SBA's faulty treatment of a home equity loan used to provide funds to the applicant business. *Ironwood Commercial Builders, Inc.*, Amended Order Remanding to SBA for Further Consideration, SBA No. BDPE-532 (December 3, 2014). Petitioner asserts that because the Court ordered the SBA to reassess the application in that case, remand is necessary here as well. However, the relevant error in *Ironwood* is not present here.<sup>3</sup> The applicant in *Ironwood* had two mortgages on the primary residence before taking out a home equity line of credit. The SBA confused the balances associated with the second mortgage and the home equity loan, and so disregarded the latter balance.

After the applicant in *Ironwood* appealed the determination. Counsel for the SBA argued that the SBA had merely applied the same accounting procedure described above. The Court rejected this explanation because it did not correspond with the rationale given to the applicant in the determination letter. The determination letter did not indicate that the loan was a draw on a line of credit, and it did not say the SBA was combining it with the other mortgage balances. When calculating the applicant's net worth, the SBA deducted her residential equity, but the equity figure did not reflect the loan amount. The Court therefore remanded that case not because the accounting procedure was unreasonable, but because the SBA had committed a mistake of fact regarding the nature of the loan. Counsel's explanation of the accounting procedure was specifically described as “plausible” and “intelligible.” However, the Court could not accept it because it was a post-hoc rationalization that was inconsistent with the evidence in the Record.

There is no such post-hoc rationalization here. The Recon Determination Letter correctly identified the home equity loan as such and explained why the \$138,000 liability was moved into the “Mortgages on Real Estate” category. The SBA then actually used that figure to calculate Mrs. Stone's home equity amount. In other words, the SBA put into practice the accounting procedure described by Counsel in the *Ironwood* proceeding. Petitioner contends that the SBA's approach is at odds with standard accounting principles and that “the accounting experts agree” that the loan should be counted as both an asset and a liability. Petitioner did not elaborate on these vague points. Regardless, the Court finds that the SBA did not disregard the loan as a liability. The \$138,000 never left the liabilities side of the ledger. The SBA therefore did not commit an error in judgment.

Finally, Petitioner argues that the Recon Determination Letter failed to “explain exactly how the adjustment was made,” thereby depriving Petitioner of actionable insight should Mrs.

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<sup>3</sup> As a White female claiming disadvantage based on her gender, the applicant in *Ironwood* was required to prove individual social disadvantage by a preponderance of the evidence. The Court remanded that case in large part because the SBA failed to apply the proper evidentiary standard and failed to discuss several aspects of her social disadvantage claims. The economic disadvantage issue was thus only one of several reasons for the case to be remanded. There is no such issue here. Mrs. Stone, who is Hispanic, has a rebuttable presumption of social disadvantage. She does not contend that the SBA misanalysed any aspect of her social disadvantage claim. The present case thus relates only to her economic disadvantage claim.

Stone wish to seek admission into the program at a later date. The argument is meritless. The Recon Determination Letter describes a simple mathematical equation: the subtraction of a figure from one area and the addition of the same figure elsewhere. The change in the equity amount is a direct result of that equation. There is thus no mystery how or why the adjustment was made.

V. Conclusion

For the reasons set forth above, the Court finds that the SBA's determination was not arbitrary, capricious, or contrary to law. Accordingly, its determination is **AFFIRMED**. Subject to 13 C.F.R. § 134.409(c), this is the final decision of the SBA. Should Petitioner wish to reapply to the 8(a) BD Program, it may do so 12 months after the date of this *Decision*. 13 C.F.R. § 124.207.

**SO ORDERED.**

ALEXANDER FERNANDEZ  
Administrative Law Judge