

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

IN THE MATTER OF:

7Skyline, LLC,

Petitioner

SBA No. BDPE-574

Decided: February 8, 2019

APPEARANCES

Gary J. Montana, Esq., Montana & Associates, LLC, Osseo, Wisconsin, for Petitioner¹

Edmund M. Bender, Esq., Office of General Counsel, U.S. Small Business Administration, Washington, D.C.

DECISION²

I. Introduction and Jurisdiction

On October 4, 2018, 7Skyline, LLC (Petitioner) appealed a U.S. Small Business Administration (SBA) determination denying Petitioner entry into SBA's 8(a) Business Development (BD) program. SBA concluded that Petitioner did not establish that its owner is socially disadvantaged by a preponderance of the evidence. For the reasons discussed *infra*, I find that SBA's determination was not arbitrary, capricious, or contrary to law. The appeal therefore is denied. *See* 15 U.S.C. § 637(a)(9)(C); 13 C.F.R. § 134.406(b).

SBA's Office of Hearings and Appeals (OHA) decides appeals of 8(a) eligibility determinations under 15 U.S.C. §§ 634(i) and 637(a)(9), and 13 C.F.R. parts 124 and 134. Petitioner filed its appeal within 45 days of its receipt of SBA's determination, so the appeal is timely. 13 C.F.R. § 134.404. Accordingly, this matter is properly before OHA for decision.

¹ Mr. Montana withdrew as counsel for Petitioner on November 28, 2018.

² This decision was originally issued under the confidential treatment provision of 13 C.F.R. § 134.205. OHA received one or more timely requests for redactions and considered any requests in redacting the decision. OHA now publishes a redacted version of the decision for public release.

II. Procedural History

Petitioner is 100% owned, controlled, and managed by a woman, Ms. Jennifer C. Rouda. (Administrative Record (AR), Exh. 11, at 5.) On March 9, 2017, Petitioner applied for entry into the 8(a) BD program based on alleged social disadvantage stemming from discrimination Ms. Rouda experienced based on her gender. (AR, Exh. 11.) The application included a narrative statement describing social disadvantage and supporting documents. On April 24, 2018, SBA denied Petitioner's application, for five reasons:

- 1) Ms. Rouda, the individual upon whom eligibility for the 8(a) BD program was based, is not socially disadvantaged. 13 C.F.R. § 124.103.
- 2) Non-disadvantaged individuals or entities control or have the power to control the firm. 13 C.F.R. § 124.106.
- 3) SBA could not determine that Petitioner had been in business for a two-year period as required by 13 C.F.R. § 124.107.
- 4) Petitioner did not meet 13 C.F.R. § 124.107's potential for success requirement.
- 5) Petitioner may not be a small business under 13 C.F.R. § 124.102.

(AR, Exh. 6, at 1-2.)

With regard to the first issue, SBA explained there was not enough evidence in the narrative statement to demonstrate social disadvantage. (*Id.* at 3.) The narrative primarily included generalities of Ms. Rouda's perceptions of the renewable energy sector. The examples were vague and lacked corroborating evidence. (*Id.* at 2.) SBA found Petitioner did not connect bias or discriminatory conduct to consequences that negatively impacted entry into or advancement in business, and pointed out that on the contrary, Ms. Rouda has become an advocate and mentor to women in the energy industry, and was invited to join a leading organization in the field. (*Id.* at 3.)

On June 6, 2018, Petitioner requested reconsideration of SBA's denial. (AR, Exh. 5.) On August 23, 2018, SBA denied the request for reconsideration. (AR, Exh. 2.) Although Petitioner resolved four of the five deficiencies identified in SBA's earlier denial letter, SBA still was not persuaded that Ms. Rouda had experienced chronic and substantial social disadvantage, or that Ms. Rouda's experiences negatively impacted her entry into or advancement in the business world. (*Id.*) On October 4, 2018, Petitioner filed the instant appeal with OHA.

III. Basis for Social Disadvantage

Petitioner asserts that it meets the requirements of a socially disadvantaged business under 13 C.F.R. § 124.103, because Petitioner is a “woman-owned, technical services business in the renewable energy field.” (AR, Exh. 10, Narrative Statement (NS), at 2.)

IV. Instances of Alleged Social Disadvantage

Petitioner alleged in its 8(a) BD program application narrative that women are underrepresented in the United States energy industry, making up less than 24% of the solar industry workforce and only 5% of the executive board membership at the “top 200 power and utility companies,” and many energy companies have no female representation on their board of directors. (NS at 2.) Petitioner further argued that most women in the renewable energy industry are in administrative roles, instead of “technical and ownership roles.” (*Id.*) Petitioner averred Ms. Rouda, the owner and principal of Petitioner, “has experienced gender-based discrimination firsthand.” (*Id.*)

A. Gender-Based Discrimination in Education

1. Gender-based Discrimination at Brown University

Petitioner maintained that, while pursuing her undergraduate degree, “only roughly 35% of [Ms. Rouda’s] classmates in the Geology/Chemistry program at Brown University were women.” (*Id.*) Moreover, Ms. Rouda “experienced gender-based discrimination for the first time in college.” (*Id.*) Ms. Rouda reported a “foreign chemistry teacher for harassing female students, which resulted in a lawsuit by several families against Brown University.” (*Id.*)

2. Gender-Based Discrimination at Dartmouth College

When Ms. Rouda attended graduate school at Dartmouth College, women comprised only 25% of her graduate program in Earth Sciences. (*Id.*)

B. Gender-based Discrimination in Employment

According to Petitioner, Ms. Rouda “witnessed the social patterns and pressures that discourage women from pursuing technical roles in the renewable energy field.” (*Id.*) Ms. Rouda was promised a leadership role by a local office, which was revoked by male executives at the company’s headquarters. (*Id.*) Further, “[t]hroughout her career, she was forced to change jobs several times, usually after reaching a glass ceiling and outgrowing her role.” (*Id.*)

Ms. Rouda also experienced discrimination “as a day-to-day matter.” (*Id.*) Petitioner described an instance when “male bosses and clients were professional and reasonable [to Ms. Rouda] during very tense group meetings, only to call [Ms. Rouda] later threatening her.” (*Id.*) In response to a former client stating that “there will be blood” if Ms. Rouda submitted another change order, she contacted the human resources department, whereupon she and another female deputy project manager were removed from the project. (*Id.* at 3.)

Petitioner explained that there were also less overt examples of discrimination, such as being denied access to meetings or being omitted from important email correspondence. A recruiter referred to Ms. Rouda as a “smart girl,” although Ms. Rouda was 40 years old at the

time. Petitioner asserted that Ms. Rouda's male colleagues would not have been subjected to such condescension. (*Id.*)

Petitioner stated that Ms. Rouda “went out of her way to obtain speaking roles at conferences, to avoid asking her firm to pay conference and travel fees.” (*Id.*) Such events are integral to networking and professional growth necessary for advancement in the renewable energy industry. (*Id.*) Ms. Rouda also “found it difficult to find good mentors” in her industry. (*Id.*)

Petitioner added that Ms. Rouda was invited to join a premier renewable energy advocacy organization, and that if she becomes a member, Petitioner would be the “only woman-owned business represented in the organization.” (*Id.*)

C. Additional Information Regarding Social Disadvantage

In its letter to SBA seeking reconsideration, Petitioner offered more information about the harassment and discrimination Ms. Rouda experienced in education and in the renewable energy industry. (AR, Exh. 5.) Petitioner acknowledged that Ms. Rouda “ha[s] been able . . . to overcome these obstacles.” (*Id.* at 1.)

Ms. Rouda's “most pivotal experience” of “institutional neglect” came when she was pulled onto a male professor's lap when she went to office hours regarding an assignment. (*Id.* at 2.) Ms. Rouda thereafter avoided contact with the professor and received a “C” grade in the course, despite normally earning “A's,” because she did not go to office hours for assistance as a result of the professor's conduct. (*Id.*) Ms. Rouda detailed the incident on an end-of-year evaluation. (*Id.*) Several years later, a lawsuit was filed by other female students, and Ms. Rouda was subpoenaed to testify in the case. (*Id.*)

Petitioner asserted that, while employed at [Employer 1], Ms. Rouda had to “work nights [and] weekends” to get ahead while male peers were not required to do as much for promotion. (*Id.* at 3.) Ms. Rouda was assigned administrative functions in addition to her project management responsibilities and was kept below the level where she could earn stock and larger bonuses. (*Id.*) Ms. Rouda was promised an office manager position for three years but never got the position because the individual in the position “never stepped aside to make room for [her].” (*Id.*) After Ms. Rouda left the company, a younger man with less experience was eventually promoted into the role. (*Id.*)

Petitioner described an incident, while Ms. Rouda was employed at [Employer 2], when a manager unexpectedly asked her to deliver a PowerPoint presentation. (*Id.*) Although the presentation was successful, the task nevertheless was a “sink or swim high stakes request in front of a new client” that would not have been expected of male colleagues. (*Id.*) Petitioner alleged that [Employer 2] management was unfriendly to women, as on one occasion a group of 12 employees was reorganized and as a result, two of three women in the group “were demoted to [] junior leaders instead of leads for sectors.” (*Id.*) Further, the [Employer 2] conference budget was allocated unfairly such that Ms. Rouda had to agree to speak at conferences in order

to attend. (*Id.*) Petitioner alleged that Ms. Rouda and other women were left out of important conference calls and meetings. (*Id.*)

Petitioner asserted that Ms. Rouda hesitated to raise her labor rates for fear of not being hired. (*Id.* at 4.) Further, Ms. Rouda has perceived that “a lot of men are gender biased and don't like working with women, and do not believe they are technically competent or have enough experience to provide high level strategic advice for electric transmission, gas pipeline, and other energy projects.” (*Id.*) Petitioner maintained that Ms. Rouda has been “affected socially by the pervasive negative treatment of women in the energy industry.” (*Id.*) Petitioner stated that Ms. Rouda asked a male colleague at another firm to be the prime contractor on a project for an Eastern European client due to concern that the client would not accept her as an expert. (*Id.*)

D. Ms. Rouda's Resume

With its 8(a) application, Petitioner provided a copy of Ms. Rouda's resume. The resume first introduces Ms. Rouda as the founder and principal consultant of Petitioner. (AR, Exh. 11, at 30). The resume notes that Ms. Rouda's “experience includes overseeing or consulting on dozens of high profile energy projects over 20+ years.” (*Id.*) Ms. Rouda was “formerly the Vice President of Environmental Development for [Employer 3].” (*Id.*) Prior to that position, she “served as a global project account manager for [Employer 2] and a principal planner at [Employer 1].” (*Id.*) The resume lists major clients for which Ms. Rouda “has served as program or project manager.” (*Id.*)

Ms. Rouda's resume details her education including a Master of Science in Earth Sciences from Dartmouth College and a Bachelor of Science degree, with honors, in Geology/Chemistry from Brown University. (*Id.*) The resume also describes various projects with which Ms. Rouda has been involved pertaining to Electric Transmission, Oil and Gas, and Solar energy. (*Id.* at 30-31.)

V. SBA's Final Determination

On August 23, 2018, SBA denied Petitioner's request for reconsideration of the April 24, 2018 decision. SBA stated that it still was not persuaded that Ms. Rouda had experienced chronic and substantial social disadvantage, or that Ms. Rouda's experiences negatively impacted her entry into or advancement in the business world. (AR, Exh. 2, at 1.) SBA based its decision, in part, on Ms. Rouda's resume and Petitioner's acknowledgement that Ms. Rouda was “able to overcome [the] obstacles” described in her 8(a) application narrative. (*Id.* at 2.) SBA noted that Ms. Rouda's resume characterizes her as a leader in her field, and details more than 20 years of experience overseeing or consulting on dozens of high-profile energy projects. (*Id.*) Ms. Rouda earned degrees from Brown University and Dartmouth College, and has held numerous high-level positions. (*Id.*)

SBA first addressed Petitioner's claims of social disadvantage arising from Ms. Rouda's education. While the alleged sexual harassment by a professor is extremely troubling, it does not meet SBA's criteria that social disadvantage must be chronic and substantial. (*Id.*) Petitioner described only a single, one-time incident, and the incident did not prevent Ms. Rouda from

earning her undergraduate degree with honors from Brown and her graduate degree from Dartmouth. (*Id.*)

SBA next addressed Petitioner's claims of social disadvantage during Ms. Rouda's employment. Although Petitioner complained of Ms. Rouda's treatment at [Employer 1], her resume indicates that, during her ten-year tenure at the firm, she was quickly promoted from senior consultant to chief, and then to principal. (*Id.*) Further, Ms. Rouda managed the two largest projects of the [XXXX] office from 2010-2011. (*Id.*) SBA found no indication that Ms. Rouda's work assignments, or the failure of the company to appoint her office manager, were based on gender. (*Id.* at 3.)

With regard to Petitioner's claim that, while at [Employer 2], Ms. Rouda was unexpectedly required to give a PowerPoint presentation to a new client, SBA considered it "very unlikely that a manager would risk the business of a new client in order to make any subordinate, male or female, look bad." (*Id.*) Moreover, at the time of the incident, Ms. Rouda served as Client Service Manager, Global Energy Accounts, and thus may have been the most logical choice to deliver the presentation. Based on these factors, SBA concluded that "[t]he assertion of gender bias is not credible." (*Id.*)

SBA also was unpersuaded by Petitioner's arguments that Petitioner has had difficulty obtaining sufficient capital to grow quickly. (*Id.*) Many small businesses are challenged by the need for additional working capital, and Petitioner did not provide supporting details to suggest that gender bias created these difficulties. (*Id.*) Similarly, Ms. Rouda's hesitation to raise her labor rates is a common problem facing small businesses, which frequently must overcome the perception that it is costlier to do business with a smaller company than with a large business. (*Id.*) SBA found that there was insufficient information to establish that Ms. Rouda's gender was the primary cause of the decision not to raise rates. (*Id.*)

SBA also addressed Petitioner's contention it had to partner with a male-owned firm to obtain business with an Eastern European client. (*Id.*) SBA noted that this strategy was based on Ms. Rouda's own assessment of the client's views, and that Petitioner ultimately won the business through partnering. (*Id.*)

SBA concluded that Petitioner did not establish social disadvantage by a preponderance of the evidence. The examples and information provided did not substantiate Petitioner's claim of chronic and substantial social disadvantage and did not demonstrate that Ms. Rouda's experiences negatively affected her entry into or advancement in the business world. (*Id.* at 4.)

VI. The Appeal

On October 4, 2018, Petitioner filed the instant appeal. Petitioner maintains that SBA's decision is arbitrary and should be reversed. (Appeal at 2.)

Petitioner argues that the examples it provided of gender bias and sexual harassment were sufficient to prove social disadvantage. (*Id.* at 3.) SBA erred in disregarding some of Petitioner's assertions of gender bias, and in finding other claims inadequately documented. (*Id.*)

Accompanying the appeal, Petitioner offers seven new “letters of support to verify my stories and document my credibility.” (*Id.*)

Petitioner also outlines four additional examples of gender bias and harassment Ms. Rouda experienced in education and employment. (*Id.* at 5-7.) [XXXXXXX]³

VII. SBA's Response

On November 19, 2018, SBA responded to the appeal. SBA argues that its decision to deny Petitioner entry into the 8(a) BD program was proper, because Ms. Rouda failed to prove social disadvantage within the meaning of 8(a) BD program regulations. (Response at 8-9.) Therefore, the appeal should be denied.

SBA first objects to Petitioner's attempt to introduce of new evidence, specifically the seven “Letters of Support” and the four “Additional examples of Gender Bias” included with the appeal. SBA highlights that Petitioner did not provide this new evidence during the review process, even after SBA requested additional documentation to bolster Petitioner's original claims. (*Id.* at 4-5.) Further, although OHA may consider new evidence on appeal when there is a substantial showing of bad faith or improper conduct on the part of SBA, Petitioner has not alleged, or proven, any bad faith or improper conduct by SBA in the instant case. (*Id.*, citing 13 C.F.R. § 134.407.) As a result, Petitioner's new evidence should be excluded from the record.

Next, SBA highlights that, because Ms. Rouda is not a member of a group presumed to be socially disadvantaged under 13 C.F.R. § 124.103(b), she was required to establish her social disadvantage by a preponderance of the evidence. (*Id.* at 7.) Such a showing requires evidence of: 1) an objective distinguishing feature that contributed to social disadvantage, such as race, gender or physical handicap; 2) personal experiences of substantial and chronic social disadvantage in American society; and 3) negative impact upon entry into or advancement in the business world because of the disadvantage. (*Id.*, citing 13 C.F.R. § 124.103(c)(2).) An applicant's mere belief that he or she has faced discrimination, without supporting facts, is not sufficient to prove social disadvantage by a preponderance of the evidence. (*Id.* at 8, citing *Matter of Spectrum Contracting Services, Inc.*, SBA No. BDP-378 (2010).) Further, SBA may reject claims of social disadvantage that are inherently improbable; inconsistent with credible evidence; or lacking in detail. (*Id.* at 10-11, citing 13 C.F.R. § 124.103(c)(3) and (c)(5), and *Matter of Southern Aire Contracting, Inc.*, SBA No. BDP-453 (2012).)

Here, although Petitioner advanced several claims of discrimination, SBA addressed each of those claims and reasonably explained why the claims were not sufficient to show social disadvantage. Petitioner's strongest argument was its claim that Ms. Rouda was sexually harassed as a student at Brown University. However, “one incident does not constitute chronic and substantial disadvantage,” and Petitioner's remaining claims were unpersuasive and lacking in detail. (*Id.* at 12.)

³ The four additional examples of gender bias and harassment have been redacted at Petitioner's request.

SBA analyzed Ms. Rouda's allegations of discrimination during her employment at [Employer 1] and found that there was no demonstrated nexus between these allegations and Ms. Rouda's entry into, or advancement in, the business world. According to Ms. Rouda's resume, she was quickly promoted during her ten years at the company, held several high-level positions, and managed large projects. (*Id.* at 12-13.)

Similarly, Ms. Rouda did not demonstrate that discrimination at [Employer 2] negatively affected her success. In fact, Ms. Rouda was “quite successful” at [Employer 2], serving as Client Service Manager, leading large groups of technical professionals, and working on signature projects. (*Id.* at 13.) SBA reasonably concluded that Ms. Rouda failed to give sufficient detail to prove social disadvantaged based on her experiences at [Employer 2]. (*Id.* at 13-14.)

SBA also afforded little weight to the contention that Ms. Rouda needed to partner with a male-owned concern in order to perform a project for an Eastern European client. (*Id.* at 14.) Petitioner did not support its premise that the client would have been unwilling to engage Ms. Rouda directly. Further, Petitioner did not explain how serving as a subcontractor on this project adversely affected Ms. Rouda or prevented her, or Petitioner, from obtaining future work. To the contrary, Petitioner apparently is a very successful company, well respected in its field. (*Id.*) On these facts, SBA properly found that there was insufficient detail to prove social disadvantage to entering or advancing in the business world. (*Id.*)

VIII. Discussion

A. Standard of Review

An 8(a) eligibility determination may be reversed on appeal only if OHA concludes, based upon the entire administrative record, that SBA's determination was arbitrary, capricious, or contrary to law. *See* 15 U.S.C. § 637(a)(9)(C); 13 C.F.R. § 134.406. OHA's task is to decide whether SBA reached a reasonable conclusion in light of the facts available in the administrative record. 13 C.F.R. § 134.406(b)(2); *Matter of United Global Techs., Inc.*, SBA No. BDPE-518, at 2 (2014). An SBA determination may be found arbitrary and capricious if 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 SBA and OHA. *Matter of MJL Enterprises, LLC*, SBA No. BDPE-566, at 5 (2017); *Matter of McMahon Builders, Inc.*, SBA No. BDPE-461, at 4 (2013).

B. Administrative Record

In conducting its review, OHA may only consider information contained in the written administrative record. 13 C.F.R. § 134.406(a). As a result, the administrative record must be complete before OHA can ascertain whether it supports SBA's determination. *Matter of Southern Aire Contracting, Inc.*, SBA No. BDPE-453, at 2 (2012). A complete administrative record must contain all documents that are relevant to the determination on appeal, and upon which the SBA decision-maker, and those SBA officials that recommended either for or against the decision, relied. 13 C.F.R. § 134.406(c)(1).

In the instant case, SBA filed a comprehensive administrative record with OHA, and Petitioner has not objected to the absence of any documents from the administrative record or to any SBA claim of privilege. I therefore find that the administrative record is complete. *Id.* § 134.406(c)(3).

I further agree with SBA that the new evidence offered by Petitioner with its appeal — specifically, the seven “Letters of Support” and the four “Additional examples of Gender Bias” — cannot be included in the administrative record, because Petitioner did not first provide this evidence to SBA with the 8(a) application or upon reconsideration. Pursuant to 13 C.F.R. § 134.407(a), OHA cannot consider new evidence on appeal absent a showing of bad faith or improper conduct on the part of SBA. Here, Petitioner has not alleged any such bad faith or improper conduct by SBA. Section VI, *supra*. Nor does Petitioner dispute that the new evidence was not previously made available to SBA. *Id.* As such, the new evidence is EXCLUDED from the administrative record and has not been considered for purposes of this decision. *E.g., Matter of Arrow S. Company, Inc.*, SBA No. BDPE-546, at 9 (2015).

C. Petitioner's Burden of Proof Before SBA

A concern meets the basic requirements for admission into the 8(a) BD program if it is a small business that is unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and are citizens of the United States, and if it demonstrates the potential for business success. 13 C.F.R. § 124.101. A “socially disadvantaged individual” for purposes of the program is someone who has been the subject of racial or ethnic prejudice or cultural bias within American society. *Id.* § 124.103(a). Members of certain racial and ethnic groups, enumerated in the regulation, are presumed socially disadvantaged. *Id.* § 124.103(b).

Those who are not members of any presumptively-disadvantaged group must establish individual social disadvantage by a preponderance of the evidence. *Id.* § 124.103(c)(1). Essentially, the applicant's evidence must demonstrate that “it is more likely than not that bias was a factor.” *Matter of Express Plus Staffing, LLC*, SBA No. BDPE-533, at 2 (2014). Evidence is generally in the form of a narrative statement, recounting specific, bias-motivated events in the individual's education, employment history, and/or as owner of the applicant business demonstrating that (1) the individual has at least one objective distinguishing feature that has contributed to their social disadvantage; (2) the individual has experienced social disadvantage in the United States because of that distinguishing feature; (3) the social disadvantage has been “chronic and substantial, not fleeting or insignificant”; and (4) the social disadvantage negatively impacted the individual's “entry into or advancement in the business world.” 13 C.F.R. § 124.103(c).

When reviewing the information presented, SBA “may not arbitrarily disbelieve credible evidence.” *Matter of Bitstreams, Inc.*, SBA No. BDP-122 at 10 (1999). However, SBA may discount or disregard an example included in the narrative statement if it is (1) inherently improbable, (2) inconsistent with other credible evidence in the record, (3) lacking in sufficient detail, (4) merely conclusory, or (5) if the applicant failed to provide apparently available

supporting evidence without explanation. *Matter of Southern Aire Contracting, Inc.*, SBA No. BDPE-453, at 6 (2012). A sufficiently-detailed allegation will specify (1) when and where the incident occurred, (2) who discriminated, (3) how the discrimination took place, and (4) how the individual claiming disadvantage was adversely affected by the discrimination. *Id.*

In order to be considered an instance of social disadvantage, each instance of alleged discriminatory conduct must be accompanied by the negative impact on the individual's entry into or advancement in the business world. 13 C.F.R. § 124.103(c)(3)(i). SBA may disregard a claim of social disadvantage where an individual presents evidence of discriminatory conduct, but fails to connect the discriminatory conduct to consequences that negatively impacted his or her entry into or advancement in the business world. *Id.* § 124.103(c)(3)(iii). SBA may request an applicant claiming to be disadvantaged provide additional facts to support his or her claim in order to show a negative outcome was based on discriminatory conduct rather than a legitimate nondiscriminatory reason. *Id.* § 124.103(c)(4). SBA must then assess whether the totality of the described events shows the requisite negative impact. *Id.* § 124.103(c)(6).

The chronic and substantial social disadvantage requirement is usually met if the applicant describes “more than one or two specific, significant incidents.” *Matter of Tony Vacca Constr., Inc.*, SBA No. BDP-321, at 6 (2009). A single incident may be sufficient, however, if it is “so substantial and far-reaching that there can be no doubt that the applicant suffered social disadvantage.” *Matter of Southern Aire Contracting, Inc.*, SBA No. BDP-505, at 6 (2013).

D. Analysis

Having reviewed the administrative record and the arguments of the parties, I see no basis to conclude that SBA's determination was arbitrary, capricious, or contrary to law. As a result, this appeal must be denied.

As SBA observes, much of the information initially offered by Petitioner to support Ms. Rouda's claim of social disadvantage was vague, conclusory, insufficiently detailed, and/or unrelated to Ms. Rouda's personal experiences. Section IV, *supra*. Merely reciting statistical data, for example, sheds no light on whether Ms. Rouda herself experienced social disadvantage.

Petitioner provided more concrete information with its request for reconsideration, but SBA addressed each of Petitioner's claims and reasonably explained why they were not sufficient to show social disadvantage. A principal flaw with several of Petitioner's claims was its inability to show that the alleged incidents of discriminatory conduct adversely affected Ms. Rouda's entry into, or advancement in, the business world. Section V, *supra*. Pursuant to 13 C.F.R. § 124.103(c)(3)(i), “[e]ach instance of alleged discriminatory conduct must be accompanied by a negative impact on the individual's entry into or advancement in the business world in order for it to constitute an instance of social disadvantage.” Further, SBA may disregard a claim of social disadvantage “where an individual presents evidence of discriminatory conduct but fails to connect the discriminatory conduct to consequences that negatively impacted his or her entry into or advancement in the business world.” 13 C.F.R. § 124.103(c)(3)(iii). The regulations also provide the following example to illustrate the importance of demonstrating adverse effect:

Example to paragraph (c)(3)(iii). A woman who is not a member of a designated group attempts to establish her individual social disadvantage based on gender. She provides instances where one or more male business clients utter derogatory statements about her because she is a woman. After each instance, however, she acknowledges that the clients gave her contracts or otherwise continued to do business with her. Despite suffering discriminatory conduct, this individual has not established social disadvantage because the discriminatory conduct did not have an adverse effect on her business.

Id.

Here, similar to the situation described in the above-quoted example, SBA analyzed Ms. Rouda's allegations of discrimination during her employment and found no demonstrated nexus between the allegations and Ms. Rouda's entry into, or advancement in, the business world. On the contrary, Petitioner conceded that Ms. Rouda was able overcome the obstacles she has faced, and according to Ms. Rouda's resume, she was quickly promoted by her employers, held several high-level positions, and managed various large projects. Section IV, *supra*. Petitioner contended that a supervisor unfairly required Ms. Rouda to deliver a PowerPoint presentation to a new client, but also admitted that the presentation ultimately was successful. *Id.* Similarly, Petitioner alleged that it was required to partner with a male-owned company in order to secure a project with an Eastern European client, but did not explain how serving as a subcontractor rather than as the prime contractor was harmful to Ms. Rouda or Petitioner. *Id.* Based on this record, then, SBA could reasonably conclude that Petitioner did not meet its burden of proving individual social disadvantage by a preponderance of the evidence, and that Petitioner did not demonstrate that Ms. Rouda's experiences negatively affected her entry into or advancement in the business world. *Matter of United Global Techs., Inc.*, SBA No. BDPE-518 (2014) (applicant's resume undermined claims that she was negatively impacted by alleged incidents of discrimination); *Matter of Spectrum Contracting Servs., Inc.*, SBA No. BDP-378 (2010).

SBA also thoroughly addressed Petitioner's allegation that Ms. Rouda was sexually harassed at Brown University, and found that the incident, while extremely unfortunate, was a one-time occurrence, and that Ms. Rouda went on to graduate with honors from Brown, and thereafter was admitted to a prestigious graduate program. Section V, *supra*. Under SBA regulations, a person seeking to prove individual social disadvantage must show evidence of social disadvantage that is both "chronic and substantial." 13 C.F.R. § 124.103(c)(2)(iii). It was not unreasonable for SBA to find that the alleged one-time incident did not meet the requirement of "chronic and substantial" social disadvantage. *Matter of Alabasi Constr., Inc.*, SBA No. BDP-368, at 7 (2010).

I conclude that SBA (1) considered all of Petitioner's evidence, (2) its determination was based solely on the facts presented in the administrative record, and (3) the determination provides a clear rationale based on those facts. *Matter of Hruckus, LLC*, SBA No. BDPE-572, at 22 (2018). Accordingly, Petitioner has failed to establish that SBA's decision was arbitrary, capricious, or contrary to law. *See* 15 U.S.C. § 637(a)(9)(C); 13 C.F.R. § 134.406(b).

IX. Conclusion

For the foregoing reasons, I AFFIRM SBA's determination and DENY this appeal. 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).

KENNETH M. HYDE
Administrative Judge