

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

IN THE MATTER OF:

GTEC Industries, Inc.,

Petitioner

SBA No. BDPE-576

Decided: February 28, 2019

ORDER DISMISSING APPEAL¹

I. Background

On May 14, 2018, GTEC Industries, Inc. (Petitioner) was denied admission into the U.S. Small Business Administration (SBA) 8(a) Business Development (BD) program because SBA's Acting Associate Administrator for the Office of Business Development (AAA/BD): (1) could not determine that the Georgia Tribe of Eastern Cherokee suffered from economic disadvantage under 13 C.F.R. § 124.109(b)(2); and (2) determined that Petitioner did not demonstrate the potential for successfully meeting the business development objectives of the 8(a) BD program under 13 C.F.R. § 124.109(c)(6). (Initial Decision at 1-2.)

Petitioner requested reconsideration of the AAA/BD's determination. On November 26, 2018, the AAA/BD concluded that Petitioner had not resolved either of the deficiencies cited in the initial denial letter. (Reconsideration at 1-2.) Therefore, Petitioner's request for reconsideration was denied. (*Id.*)

On January 10, 2019, Petitioner appealed the AAA/BD's reconsideration decision to SBA's Office of Hearings and Appeals (OHA). Petitioner subsequently filed an amended appeal petition on January 29, 2019.

On February 14, 2019, OHA ordered Petitioner to show cause why the appeal should not be dismissed for lack of jurisdiction. (Order at 1.) OHA explained that “[u]nder SBA regulations, denials of 8(a) BD program admission that are based, in whole or in part, on grounds other than a negative finding of social disadvantage, economic disadvantage, ownership, or control, are beyond OHA's jurisdiction.” (*Id.*, citing 13 C.F.R. § 134.405(a)(1) and *Matter of Neo-Tech Solutions, Inc.*, SBA No. BDPE-560 (2017).)

¹ This appeal is decided under 15 U.S.C. §§ 634(i) and 637(a)(9), and 13 C.F.R. parts 124 and 134.

Petitioner responded to OHA's Order on February 22, 2019. Petitioner “acknowledges that OHA may not be permitted to exercise jurisdiction over all aspects of the pending appeal,” but requests that “any order of dismissal be entered in a manner that would not prejudice any review in federal district court.” (Response to Order at 1.)

II. Discussion

OHA lacks jurisdiction over this appeal. As noted above, SBA rejected Petitioner's application for entry into the 8(a) BD program based, in part, on a finding that Petitioner did not meet the potential for success requirements for tribally-owned entities at 13 C.F.R. § 124.109(c)(6). Petitioner seeks to challenge this finding on appeal, but SBA regulations make clear that any appeal must be “based solely on a negative finding of social disadvantage, economic disadvantage, ownership, control, or any combination of these four criteria. A denial decision that is based at least in part on the failure to meet any other eligibility criterion is not appealable and is the final decision of SBA.” 13 C.F.R. § 124.206(a).

Similarly, OHA must decline to accept jurisdiction over any “appeals of denials of 8(a) BD program admission based in whole or in part on grounds other than a negative finding of social disadvantage, economic disadvantage, ownership or control.” 13 C.F.R. § 134.405(a)(1); *see also* 15 U.S.C. § 637(a)(9)(B)(i) and (E); *Matter of Neo-Tech Solutions, Inc.*, SBA No. BDPE-560 (2017) (dismissing an appeal where one ground for denial was lack of potential for success). Accordingly, because the instant appeal seeks, in part, to challenge an issue other than a negative finding of social disadvantage, economic disadvantage, ownership or control, the appeal is beyond OHA's jurisdiction.

III. Conclusion

For the above reasons, the appeal is DISMISSED for lack of jurisdiction. Pursuant to 13 C.F.R. § 124.206(a), the AAA/BD's decision on reconsideration remains the final decision of the SBA.

KENNETH M. HYDE
Administrative Judge