United States Small Business Administration
Office of Hearings and Appeals

IN THE MATTER OF: GTEC Industries, Inc., Petitioner	SBA No. BDPE-589 Decided: February 4, 2021

DECISION

I. Introduction and Jurisdiction

On September 24, 2020, GTEC Industries, Inc. (Petitioner), appealed an August 10, 2020 denial letter by the Small Business Administration (SBA) denying Petitioner entry into 8(a) Business Development (BD) program. For the reasons discussed *infra*, I find that SBA's determination was not arbitrary, capricious, or contrary to law. The instant appeal is therefore 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) has jurisdiction to adjudicate 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 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.

II. Facts and Procedural History

Petitioner initially applied for admission to the 8(a) BD program in May 2017. On May 14, 2018, SBA declined Petitioner's application based on a determination that: (1) Petitioner failed to establish its economic disadvantage as required by 13 C.F.R. § 124.109(b)(2), and (2) Petitioner failed to demonstrate potential for success in accordance with 13 C.F.R. § 124.109(c)(6). Petitioner then submitted a timely request for reconsideration. On November 26, 2018, SBA issued a final agency decision declining Petitioner's application on identical grounds but for different reasons. More specifically, the letter stated that Petitioner only submitted two financial statements for 2017 and one for 2016 but did not provide any additional information required by 13 C.F.R. § 124.109(c)(6). Without specific information about the number of tribal members present, tribal unemployment rate, per capita income of tribal members, percentage of tribal population below the poverty level, or the tribe's access to capital, SBA was unable to determine that the tribe is economically disadvantaged. Additionally, SBA was unable to find that Petitioner demonstrated potential for success as a tribally owned entity per 13 C.F.R. § 124.109(c)(6) based on the evidence provided. Petitioner filed a lawsuit in federal district court challenging the Agency's decision on April 12, 2019.

On August 21, 2019, SBA's Associate Administrator for Business Development (AA/BD) rescinded the November 26, 2018 reconsideration decline decision and re-opened Petitioner's application for a new application determination. In its letter, the AA/BD expressed concerns that SBA may have overlooked information related to Petitioner's economic disadvantage and financial condition. The letter explained that SBA obtained credible information that Petitioner may not qualify as an Indian tribe eligible for 8(a) BD program participation. More specifically, the letter stated that SBA obtained a study commissioned by the Georgia Council on American Indian Concerns at the request of the Governor to investigate the competing claims of various parties claiming to be the Georgia Tribe of Eastern Cherokee. This study concluded that Petitioner is not the Tribe recognized by Georgia General Assembly as a legitimate American Indian Tribe. Additionally, the study concluded that Petitioner serves as a non-profit Indian heritage organization engaged in the recruitment those who are of Cherokee heritage in the State of Georgia. According to the study, Petitioner is not functioning as an Indian tribe by the State of Georgia. As such, SBA requested any information and supporting documentation to corroborate Petitioner's claim that it is in fact the Tribe as recognized by the State of Georgia. Petitioner responded on March 18, 2020 with supporting documentation including financial statements and a merger agreement. On April 24, 2020, Petitioner was notified that it was denied admission to the 8(a) BD Program on the basis that it failed to demonstrate Petitioner's status as a state-recognized Indian tribe. Upon reconsideration at the Petitioner's request, on August 10, 2020, SBA again notified Petitioner that it did not provide sufficient evidence to overcome the reasons for decline.

III. Petitioner's Appeal

Petitioner begins the appeal by stating that it is owned and controlled by the George Tribe of Eastern Cherokee, Inc., (GTECI) a corporation wholly owned by the Georgia Tribe of the Eastern Cherokee, a Native American Indian Tribe (Tribe) recognized by the State of Georgia. (Appeal, at 2, 6.) Although the Tribe is not federally recognized, Petitioner claims that Georgia's recognition makes it a "tribal entity" eligible for admission into the 8(a) BD Program. (*Id.*) Petitioner then argues that SBA's decision to decline its application is arbitrary, capacious, or contrary to law for several reasons. (*Id.*, at 14.)

Petitioner first argues that SBA denied its application in bad faith. More specifically, Petitioner claims that SBA only questioned Petitioner's status as a pretext to decline the application. (*Id.*, at 13.) Petitioner argues SBA had improperly applied a "perpetually shifting target," without providing Petitioner sufficient information as to what was expected of it. *In the Matter of Southern Aire Contracting, Inc.*, SBA No. BDP-453 (2012). Petitioner complains that at earlier stages in its application SBA had, after one issue was resolved, raised others, so that there was a succession of declines, followed by resolution of the issues raised, then followed by other declines, culminating in the final denial being appealed here. (Appeal, at 14-16.)

Petitioner then argues that SBA deliberately withheld guidance as to what evidence would substantiate its tribal status. (*Id.*, at 16.) Petitioner notes that SBA first relied on a report from the Georgia Council on American Indian Concerns (Council Report) questioning Appellant's status, which Petitioner countered with a report from the Georgia Attorney General, but ultimately relying upon a report from the Office of Federal Acknowledgement (OFA).

Petitioner argues the decline letter is arbitrary and capricious because SBA did not offer guidance as to what evidence Petitioner could have presented which would have been sufficient for SBA. (*Id.*, at 16-17.)

Petitioner avers that SBA lacked authority to re-open its 8(a) BD application and improperly supplemented the Administrative Record with a declination ground that was not cited during the initial review of Petitioner's application. (*Id.*, at 18.)

Petitioner then claims that SBA incorrectly assessed Petitioner's status as an Indian tribe. Since the program contemplates state-recognized tribes' participation, Petitioner claims that it was improper for SBA to question whether Petitioner is the tribe recognized by the Georgia General Assembly. (*Id.*, at 12-14.) Petitioner argues SBA regulations leave the question of whether a group constitutes a recognized tribe is a question of state law. SBA could not question the Georgia legislature in this regard. (*Id.*, at 18-19; citing 13 C.F.R. § 124.3.)

Petitioner further argues the question of whether it is owned by the Tribe is a matter of Georgia corporation law. The Tribe owns Petitioner because its organizing documents declare this to be so. (*Id.*, at 20-21; citing 13 C.F.R. § 124.109(c)(3)(i).)

Finally, Petitioner contends that Mr. Sneed and others associated with it are without question members of the Tribe and consequently are the tribe by operation of Georgia law, and therefore the Tribe controls Petitioner. (*Id.*, at 5, 19-20; citing 13 C.F.R. § 124.109(c)(4)(i).)

IV. Agency Response

In its response, SBA first argues that the Administrative Record (AR) does not support Petitioner's allegations that SBA declined Petitioner's application in bad faith. (Answer, at 5.) Additionally, Petitioner has not provided any evidence to support such allegations. (*Id.*) As for the Petitioner's claim that SBA created a "perpetually shifting target" regarding Petitioner's status, to decline Petitioner's application, is at odds with the evidence contained in the AR. (*Id.*, at 6.) More specifically, a review of the August 21, 2019 recission letter, the April 24, 2020, initial decline letter, and the August 10, 2020 reconsideration letter reveals that SBA candidly conveyed its eligibility concerns to Petitioner and afforded Petitioner multiple opportunities to submit evidence it deemed relevant. (*Id.*) While Petitioner disagrees with how the Agency considered conflicting evidence, this does not give rise to bad faith or improper behavior by SBA personnel. (*Id.*) Further, Petitioner never sought to supplement the AR or obtain evidence through discovery. (*Id.*)

SBA then argues that it properly re-opened Petitioner's application for reconsideration of 8(a) BD program eligibility, including Petitioner's status as an Indian tribe. Petitioner argues SBA is only entitled to reconsider an 8(a) BD application where an unsuccessful applicant specifically requests reconsideration under 13 C.F.R. § 124.205. SBA, however, maintains that Petitioner is reading in a restriction that does not exist. (*Id.*) First, SBA argues the clear intent of 13 C.F.R. § 124.205 is to explain a disappointed applicant's administrative remedies. There are no provisions in this section precluding SBA from unilaterally reconsidering a previously-issued application decision. (*Id.*) Second, SBA argues that OHA has previously recognized that SBA

may properly withdraw an application decision for further consideration. (*Id.*, at 7; citing *In the Matter of JASINT, Consulting and Technologies, LLC*, SBA No. BDPE-513 (2014).) SBA then points out that it has sole discretion to request clarification of information contained in the application at any time in the application process, citing 13 C.F.R. § 124.204(b). (*Id.*, at 7.)

SBA then argues that its conclusion regarding Petitioner's status as an Indian tribe is reasonable and should be upheld. More specifically, as a threshold matter, Petitioner's shareholder, GTECI, must qualify as an "Indian tribe" as defined by the Small Business Act and applicable regulations. (*Id.*) Upon reviewing the evidence in the application file, SBA concluded that SBA is unable to determine whether Petitioner qualifies as such and provided a logical rationale for the conclusion. (*Id.*) Petitioner bears the burden of establishing its eligibility for all applicable eligibility criteria, including the status of its sole shareholder as an Indian tribe. This includes establishing that the entity seeking to participate in the 8(a) BD program is the same entity recognized as a tribe by the Federal government or the applicable state. (*Id.*, at 8.)

SBA argues that Petitioner bore the evidentiary burden of establishing Petitioner's status as an Indian tribe and that its conclusion regarding Petitioner's status is reasonable and should not be disturbed. (*Id.*, at 9.) SBA asserts that aside from vague references to federalism, Petitioner gives no reason why its status should be shielded from SBA. Further, SBA maintains that its determination regarding GTECI's status as an Indian tribe is reasonable and should be upheld. SBA had obtained evidence questioning whether GTECI was as a factual matter, the tribe recognized by the state of Georgia. SBA explained that the findings of the Council and the Office of Federal Acknowledgement (OFA), an office of the Department of the Interior which implements the Federal regulations governing acknowledgment of Indian tribes under 25 C.F.R. Part 83, call into question which entity in Georgia is the state-sponsored tribe. SBA asserts that its reliance upon the findings of these two offices was reasonable and should be upheld. (*Id.*, at 11-12.)

V. Objections to the Administrative Record

With its Answer, SBA filed the Administrative Record (AR) on which it based its decision to deny Petitioner entry into the 8(a) BD Program. SBA asserted privilege over portions of the AR and withheld seventeen documents, pursuant to the attorney-client privilege and the deliberative process privilege. On November 19, 2020, Petitioner filed a timely objection to the AR and an objection to the claims of privilege asserted by SBA. Petitioner questions alleged discrepancies between the AR and information provided under a prior Freedom of Information Act (FOIA) request. Additionally, Petitioner asserts that the SBA did not provide an adequate Vaughn Index. On November 23, 2020, I ordered SBA to provide a detailed Vaughn index, which it did on December 7, 2020.

On December 14, 2020, Petitioner renewed its objections to the AR and SBA's privilege claims. More specifically, Petitioner requested that SBA produce 648 e-mails for inclusion in the AR because these emails were included in the response to its FOIA request. As such, they Petitioner claims the emails were considered by the SBA decisionmaker who declined its application. Additionally, Petitioner argues that the declaration of Mr. Lamar Sneed should be included in the AR because it was submitted for SBA's review and considered by SBA prior to

issuance of the delineation decision. It its response, SBA contends the AR was certified by SBA's Associate Administrator for Business Development, as complete to the best of her knowledge and belief that a complete and accurate copy of all the documents that 8(a) BD program personnel relied on in examining Petitioner's program eligibility. Specific to the declaration of Mr. Sneed, SBA consented to the request.

On December 14, 2020, Petitioner also requested a case management conference. Following OHA's Notice of Assignment, transferring this matter to the Office of Hearing and Appeals, Department of Housing and Urban Development, and an order vacating the transfer, Petitioner renewed its request on February 1, 2021.

VI. Discussion

A. Procedural Issues

Petitioner has twice requested status conferences on this matter. However, with a complete Administrative Record (AR), the Appeal Petition, and the Agency Answer all before me, I conclude the AR is complete and ready for decision. I see no need for such conferences, and thus DENY Petitioner's requests.[1]

Petitioner's request that 648 emails responsive to its FOIA request be admitted into the AR is DENIED. The AR is to include all documents relevant to the determination on appeal and on which SBA officials relied in making their decision. 13 C.F.R. § 134.406(c). However, it need not contain all documents pertaining to a petitioner. (*Id.*) Here, SBA has provided all the documents upon which it relied in reaching its decision on Petitioner's application, as certified under penalty of perjury by SBA's Associate Administrator for Business Development. Accordingly, Petitioner's demand for additional documents is not supported by the regulation, and I must deny it. Petitioner's request to add declaration by Mr. Sneed to the AR is consented to by SBA, and I therefore GRANT it.

B. 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). There is a rebuttable presumption that members of specific racial and ethnic groups are socially disadvantaged.[2] 13 C.F.R. § 124.103(b).

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[1] Petitioner expresses confusion over the case's being reassigned to another judge, and then back to me. This was occasioned by my hospitalization for COVID-19 in December, and then by my recovery.

[2] These groups are enumerated at 13 C.F.R. § 124.103(b)(1). They include "enrolled members of a Federally or State recognized Indian Tribe."

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). Tribally owned concerns are eligible to participate in the 8(a) BD program if, among other criteria, the qualifying tribe demonstrates its economic disadvantage and is recognized by either the federal government or by a state government as eligible for special programs and services based on its status as a tribal entity. 13 C.F.R. § 124.109(b). A tribally owned concern is any concern at least 51% owned by an Indian tribe. 13 C.F.R. § 124.3. An Indian tribe is "any Indian tribe, band, nation, or other organized group or community of Indians which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides." (*Id.*)

C. Standard of Review

An SBA determination denying admission to the 8(a) BD program can be overturned only if OHA concludes (1) that the administrative record is complete; and (2) based upon the entire administrative record, the SBA determination was arbitrary, capricious, or contrary to law. 13 C.F.R. §§ 134.402, 134.406(a)-(b). Therefore, as long as SBA's determination is not arbitrary, capricious, or contrary to law, I must uphold it. *See* 13 C.F.R. § 134.406(b)(2); *see also In the Matter of United Global Technologies, Inc.*, SBA No. BDPE-518, at 2 (2014).

OHA 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 SBA's conclusion. In determining whether SBA's determination was based on a complete record, I must assess "whether the agency articulated an explanation for its conclusion that is rationally connected to the facts found in the record." *See In the Matter of Southern Aire Contracting, Inc.*, SBA No. BDPE-453, at 2 (2012). In doing so, SBA's determination must show that (1) it considered all of petitioner's evidence; (2) it arrived at its conclusion using only those facts contained in the written administrative record; and (3) its conclusion provides a clear rationale based on those facts. (*Id.*)

If the administrative record is deemed to be complete, the review proceeds to ensure that the decision was not arbitrary, capricious, or contrary to law. OHA's task is to decide whether 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. *Motor Veh. Mfrs. Ass'n v. State Farm Ins.*, 463 U.S. 29 (1983); *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."); *In the Matter of Ace Technical*, SBA No. SDBA-178., at 3 (2008) ("[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. *See State Farm*, at 42-43; *see also 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*; In the Matter of McMahon Builders, Inc.*, SBA No. BDPE-461, at 3 (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.

D. Ruling on the Administrative Record

SBA has withheld seventeen exhibits claiming the deliberative process privilege but provided those exhibits to OHA for *in camera* review. Following my November 23, 2020 Order for Revised Vaughn Index and Response to Objection to Administrative Record, SBA counsel included an appropriate index of these exhibits. Following my *in camera* review, I find that the withheld documents properly fall within the claimed privileges. Specifically, the internal analyses of SBA analysts are protected under the deliberative process privilege. *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-54 (1975). Further, the withheld material contains nothing "that would provide Petitioner with a new or different factual basis on which to challenge the SBA's decision to deny it eligibility in the 8(a) program." *In the Matter of Avellan Sys. Int'l, Inc.*, SBA No. BDP-332, at 7 (2009). The rationales and bases for SBA's decisions articulated within these documents are presented fully in the original Decline Letter dated May 14, 2018, the Reconsideration Decline Letter dated November 26, 2018, and the Recission and Re-Open Letter dated August 21, 2019. I thus conclude that the Administrative Record is complete.

E. Petitioner's Burden of Proof Before SBA

An applicant concern seeking entry into the 8(a) BD program bears the burden of proof to demonstrate eligibility. 13 C.F.R. § 124.204(c). The applicant must meet that burden by a preponderance of the evidence. *In the Matter of Raintree Advanced Management Corporation*, SBA No. BDP-407 at 19 (2011). This means that an applicant "must produce evidence of greater weight or more convincing effect than the evidence in opposition to it, that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *In the Matter of Unicon, Inc.*, SBA No. BDP-428, at 19 (2012) (internal citations omitted). OHA has previously opined that "the greater weight of evidence is not the quantity of evidence in number of witnesses or facts, but the quality or believability and greater weight of important facts proved." *In the Matter of Bitstreams, Inc.*, SBA No. BDPE-122, at 20 (1999).

The basis of Petitioner's eligibility turns on the status of the Tribe, owner of GTECI, which is Petitioner's sole shareholder, as an Indian tribe, and so Petitioner carries the burden of establishing such status by the preponderance of the evidence. Additionally, Petitioner was required to produce evidence of greater weight or convincing effect in support of Petitioner's status relative to the evidence SBA reviewed in opposition to such status. (*Id.*, at 8.)

F. Analysis

My review of this matter is narrowly limited to the issue of whether SBA's denial of Petitioner's application for admission into the 8(a) BD program was arbitrary, capricious, or contrary to law, and I may not substitute my own judgment for that of SBA. *See In the Matter of Tony Vacca Construction, Inc.*, SBA No. BDP-321 (2009). Therefore, in order to sustain SBA's determination, I must find that it was reasonable and not arbitrary, capricious, or contrary to the law.

The first step in the analysis of whether SBA's finding was reasonable is to determine whether the administrative record is complete. *See Southern Aire Contracting*, at 2 (2012). On November 9, 2020, SBA provided OHA with a copy of the Administrative Record (AR) along with its response to the instant appeal. Petitioner objected to SBA's claims of privilege and renewed its objection again on December 14, 2020. Upon OHA issuing an Order for a Revised Vaughn Index, SBA counsel included an appropriate index of the exhibits, and I find that the withheld documents properly fall within the claimed privileges. I find that the AR is complete for the reasons outlined *supra. See* Section VI, D.

Next, having reviewed the AR and the arguments of the parties, I see no basis to conclude that SBA's determination was arbitrary, capricious, or contrary to law. "[T]his review is narrow and does not constitute a substitution of the [administrative law judge's] opinion for that of the SBA's, nor does it constitute a second opportunity for consideration of Petitioner's application." *Raintree Advanced Management Corporation*, at 17. Where "SBA can provide logical, fact-centered explanations for" its "evaluation of conflicting evidence" in the application file, "then the SBA will have provided reasonable rationale for its actions, and its decision must be upheld." (*Id.* at 24.)

Here, SBA obtained credible evidence calling into question whether Petitioner, as a factual matter, is the Tribe recognized by the State of Georgia. In the August 21, 2019 letter re-opening Petitioner's application, the Agency explained that it obtained a 2007 study by the Council concluding that Petitioner is not the tribe recognized by the Georgia General Assembly. More specifically, the letter stated:

> [T]he Agency has recently received information indicating that the Tribe is not the same entity recognized by the Georgia General Assembly. Specifically, SBA is in receipt of a study commissioned by the Georgia Council on American Indian Concerns — and at the request of the Governor — to investigate the claims of the various parties claiming to be that Indian group recognized by the Georgia General Assembly as being the Georgia Tribe of Eastern Cherokee. As pertinent to GTEC's 8(a) BD application, this study concluded that your organization is not the Georgia Tribe of Eastern Cherokee as recognized by the Georgia General Assembly. In fact, this study found that the Tribe is not functioning as an Indian tribe as contemplated by criteria defined by the State of Georgia and federal authorities; rather, it serves as a non-profit Indian heritage organization engaged in recruitment of Indians in the State of Georgia who are of Cherokee heritage. Based on the foregoing, SBA questions whether GTEC qualifies as a tribally

owned concern for 8(a) BD program purposes. Please submit any information and supporting documentation to corroborate your claim that the Tribe is in fact the Georgia Tribe of Eastern Cherokee as recognized by the Georgia General Assembly.

Recission and Re-Opening Letter, August 21, 2019.

SBA also obtained the May 6, 2016, Proposed Findings Against Acknowledgement of the Office of Federal Acknowledgement (OFA), finding that the Tribe did not meet three of the seven criteria for Federal acknowledgement as a tribe. SBA explained that public findings of the OFA also called into question which tribal entity in Georgia is the state recognized tribe. As explained in the April 24, 2020, initial decline letter, OFA concluded the following with respect to the Tribe's petition for federal acknowledgement:

Various other groups claim to be the state GTEC tribe, including GTEC-Echota Fire, a GTEC group led by Bill Dover, and a group "recognized" by the federally recognized United Keetoowah Band of Cherokee Indians (UKB). These groups are separate from the GTEC petitioner, representing completely different groups of different character, aims, and ancestry.

Some evidence implies that neither [The Georgia Tribe of Eastern Cherokee] nor [The Georgia Tribe of Eastern Cherokee, Cane Break group] maintained administrative records, created meeting minutes, or held regular meetings of the governing body or membership. In fact, [The Georgia Tribe of Eastern Cherokee] and [The Georgia Tribe of Eastern Cherokee, Cane Break group] represent two leadership claimants within the petitioner, not two distinct entities. Interviews in 2015 indicate that the extended families of Walker Dan Davis and Thomas Mote have been in conflict for three generations. While members appear to know about this internal conflict, they are not willing to discuss it or submit documentation to explain it and focus instead on disagreements with non-members running their own separate "GTEC" organizations, such as Bill Dover, Johnny Chattin, and Lamar Sneed.

For instance, on May 20, 1996, Charles Thurman contacted the OFA, indicating that GTEC had been "taken in" as a satellite group by the UKB. At this point, Thurman, was associated with Dover and two other Cherokee claimants, Lamar Sneed, and Johnny Chattin. Also, in 1996, Walker Dan Davis informed the BIA that it intended to respond to the BIA's 1980 TA review letter, and also complained of Dover's group and its relationship with the UKB.

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Two years later, five GTEC council members (Mae Cain, Donna Collins, Marie Davis, Joseph M. Davis, and David L. Mobly) and GTEC Vice Chief Walker Dan Davis wrote two letters to Secretary of Interior Gale Norton. They

> state that "our own chief, Thomas Mote," has joined forces with a Lamar Sneed to "take over" GTEC's "name and recognition status in the State of Georgia." Thus, leadership disputes are arising again, with Walker Dan Davis on one side and Thomas Mote on the other. The GTEC council members write, "our Council and Tribe is opposed to our chief's affiliation with this plan. He acts on his own volition, against the express wishes of our people." Both leaders claimed to represent [The Georgia Tribe of Eastern Cherokee].
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> Beginning in 2010, the Department [of the Interior] again began to receive letters from various individuals claiming to represent [The Georgia Tribe of Eastern Cherokee]. On January 27, 2010, OFA received a "letter of intent to petition" for "status clarification" from John H. Chattin, who styled himself as "Attorney General" for "The Georgia Tribe of Eastern Cherokee." Chattin and "five council members" signed this letter. On August 16, 2010, a letter supposedly signed by Thomas B. Mote, requested OFA change the address of GTEC to one in Cumming, Georgia, and identified Lucian Lamar Sneed, a resident of Cumming, as the contact person and "Council Chairman," but also identified Thomas B. Mote as the "original petitioner (re-elected chief)." Finally, on April 13, 2011, OFA received a mailing signed by Walker Dan Davis and seven council members that included a list of the "newly selected officials" as of March 21, 2011. Davis was listed as the "chief and primary contact person for Bureau of Indian Affairs" at the P.O. Box 607 address that had been long associated with the original petitioner).
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> Proposed Finding Against the Acknowledgment of the Georgia Tribe of Eastern Cherokee, Inc. (Petitioner #41), at 3-4, 46, and 48 (emphasis added) (internal citations omitted).

Initial Decline Letter, April 24, 2020. It is clear that SBA carefully weighed the Council's and OFA's findings against the evidence submitted by Petitioner in support of Petitioner's status as an Indian tribe as defined by the regulations. Further, the August 10, 2020, reconsideration decline letter provides:

> As SBA previously explained the question in this application is whether GTEC, as a factual matter, is the same entity recognized by the State of Georgia as an American Indian Tribe. Two credible finders of fact — the Council and OFA — have raised significant questions as to whether GTEC is the same Tribal entity recognized by the State of Georgia. After carefully weighing these findings against the additional information and documentation you submitted in connection with the reconsideration request, I continue to find that SBA is unable to determine whether GTEC qualifies as an Indian tribe eligible to participate in the 8(a) BD program. To this end, I do not believe GTEC has provided sufficient evidence that would allow SBA to conclusively make this determination.

Reconsideration Decline Letter, August 10, 2020.

On appeal, Petitioner contends that SBA improperly relied on the Council's study because the findings contained therein are not legally binding and merely advisory in nature. Petitioner also claims that in reviewing OFA's findings with respect to the Petitioners' petition for federal acknowledgement, SBA imposed tribal status eligibility criteria that does not exist in Georgia.

After reviewing the AR, I find it was not unreasonable for SBA to assign greater weight to findings of fact made by another federal agency with subject matter expertise in tribal matters. Additionally, it is not unreasonable for SBA to give due consideration to the findings of the only administrative body overseeing tribal affairs in the State of Georgia, even if they are to be construed as advisory in nature. Accordingly, I find SBA assigned proper weight to all evidence concerning Petitioner's status as an Indian tribe.

I find Petitioner's argument that SBA declined Petitioner's application in bad faith to be completely baseless. Petitioner has provided no evidence to support this claim and the AR is devoid of any such evidence.

Specific to Petitioner's contention that SBA improperly re-opened Petitioner's application, I find this argument meritless. SBA's regulation provides that it has sole discretion to request clarification of information contained in the application at any time in the application process. 13 C.F.R. § 124.204(b). As such, SBA properly re-opened Petitioner's application to reconsider previous grounds for decline, as well as new concerns related to Petitioner's status as an Indian tribe.

Further, Petitioner failed to produce evidence of greater weight or more convincing effect in support of Petitioner's claimed status relative to the evidence SBA reviewed in opposition to Petitioner's status as an Indian tribe. Accordingly, Petitioner has not met its burden of demonstrating eligibility by a preponderance of the evidence.

In sum, the AR demonstrates that SBA provided Petitioner with a logical, fact-centered basis for its conclusion that is neither arbitrary, capricious, nor contrary to law. I conclude that SBA conducted a thorough review of all the evidence, considered all the evidence presented, based its conclusion on that evidence, and provided a clear rationale for its conclusion.

VII. Conclusion

For the foregoing reasons, I conclude SBA's determination denying Petitioner's admission to the 8(a) BD program was not arbitrary, capricious, or contrary to law. See 15 U.S.C. § 637(a)(9)(C); 13 C.F.R. § 134.406(b). I must therefore 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).

CHRISTOPHER HOLLEMAN
Administrative Judge