

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

IN THE MATTER OF:

3BG Marketing Solutions, LLC,

Petitioner

SBA No. BDPE-602

Decided: August 1, 2022

ORDER DISMISSING APPEAL<sup>1</sup>

I. Background

On May 27, 2022, the U.S. Small Business Administration (SBA) denied an application from 3BG Marketing Solutions, LLC (Petitioner) for entry into SBA's 8(a) Business Development (BD) program. SBA found that Petitioner did not demonstrate the potential to successfully meet the business development objectives of the 8(a) BD program, as required by 13 C.F.R. § 124.107. (Decision at 1.)

On June 28, 2022, Petitioner appealed the denial decision to SBA's Office of Hearings and Appeals (OHA). On July 5, 2022, SBA moved to dismiss the appeal for lack of jurisdiction. In its motion, SBA highlighted that the decision to deny Petitioner admission to the 8(a) BD program was based on grounds other than a negative finding of social disadvantage, economic disadvantage, ownership, or control. (Motion at 1-2.) On July 7, 2022, OHA issued an Order directing that Petitioner would have until July 20, 2022 to file any response to SBA's motion. (Order at 1.) To date, Petitioner has not responded to SBA's motion.

II. Discussion

I agree with SBA that OHA lacks jurisdiction over this appeal. As noted above, SBA rejected Petitioner's application for entry into the 8(a) BD program upon determining that Petitioner did not meet the potential for success requirements at 13 C.F.R. § 124.107. Section I, *supra*. Petitioner seeks to challenge this finding on appeal, but SBA regulations make clear that a proper 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).

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

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 GTEC Indus., Inc.*, SBA No. BDPE-576 (2019) (dismissing an appeal where one ground for denial was lack of potential for success); *Matter of Neo-Tech Solutions, Inc.*, SBA No. BDPE-560 (2017). Accordingly, because the instant appeal seeks to challenge an issue other than a negative finding of social disadvantage, economic disadvantage, ownership, or control, the appeal is beyond OHA's jurisdiction.

An additional problem for Petitioner is that Petitioner failed to offer any response to SBA's motion to dismiss. Section I, *supra*. Under OHA's rules of procedure, “[a]ll non-moving parties must file and serve a response to [a] motion or be deemed to have consented to the relief sought.” 13 C.F.R. § 134.211(c). Accordingly, by not opposing SBA's motion, Petitioner is deemed to have consented to dismissal of this appeal.

### III. Conclusion

For the above reasons, SBA's motion is GRANTED and the appeal is DISMISSED for lack of jurisdiction. Pursuant to 13 C.F.R. § 124.206(a), SBA's decision dated May 27, 2022 remains the final decision of the SBA.

KENNETH M. HYDE  
Administrative Judge