

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

IN THE MATTER OF:

Novel Wares, Inc.,

Petitioner

SBA No. BDP-454

Decided: November 21, 2012

**RULING AND ORDER ON MOTION TO DISMISS FOR LACK OF JURISDICTION AND
LEAVE TO RESPOND TO PETITIONER'S REQUEST FOR CLARIFICATION**

On September 19, 2012, Novel Wares, Inc. ("Petitioner") appealed a determination of the Small Business Administration ("SBA") denying Petitioner admission into the 8(a) Business Development program ("8(a) BD Program"). *See* 13 C.F.R. parts 124 & 134.

On November 5, 2012, the SBA filed its *Motion to Dismiss for Lack of Jurisdiction and Leave to Respond to Petitioner's Request for Clarification* ("Motion"). In the *Motion*, the SBA moves the Court to dismiss Petitioner's appeal for lack of jurisdiction. Specifically, the SBA noted that Petitioner was denied admission into the 8(a) BD program "based on grounds other than a negative finding of social disadvantage, economic disadvantage, ownership, or control."

An 8(a) BD program applicant may appeal to the Office of Hearings and Appeals (OHA) a denial of its application only if the denial is based solely upon a negative finding of social disadvantage, economic disadvantage, ownership or control.¹ 15 U.S.C. § 637(a)(9); 13 C.F.R. § 124.206(a). A denial decision based at least in part on the failure to meet any other eligibility criterion is not appealable to OHA and the Court must decline to accept jurisdiction. 13 C.F.R. § 124.206(a); 13 C.F.R. § 134.405(a)(1); Kaspar Group, Inc., SBA No. BDP-292 (Jul. 22, 2008).

According to the August 10, 2012 Determination Letter, the SBA determined Petitioner did not qualify for the 8(a) BD program, in part, because Petitioner "had not been in business for a two-year period as required by program regulations."² *See* 13 C.F.R. § 124.107. This basis is not a negative finding of social disadvantage, economic disadvantage, ownership or control and is, therefore, not appealable. *Sukhendu Bhattacharyya, P.E.*, SBA No. MSBE-94-1-6-1 (Mar. 14,

¹ 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 Office of Hearings and Appeals.

² The Determination Letter cited five other bases for its decision to deny Petitioner admission to the 8(a) BD program.

1994). Therefore, regardless of whether other appealable grounds for the denial exist in this case, the fact the denial was not based *solely* upon appealable grounds removes this case from the Court's jurisdiction.

Accordingly, it is hereby **ORDERED** that Petitioner's appeal petition is **DISMISSED** for lack of jurisdiction and Petitioner's *Request for Clarification* and the SBA's *Motion for Leave to Respond to Petitioner's Request for Clarification* are **DENIED** as moot.

J. JEREMIAH MAHONEY
Chief Administrative Law Judge (Acting)

Notice of Finality. This decision on appeal constitutes a final agency decision that is binding on the parties. 13 C.F.R. § 134.409(a). However, within 20 days of its issuance, the Court may reconsider the decision if there is a clear showing of an error of fact or law material to the decision. 13 C.F.R. § 134.409(c).