

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

BDPE Appeal of:

iZen ai Inc.,

Appellant

SBA No. BDPE-619

Decided: February 28, 2025

APPEARANCES

Gajanan Bhat, President, iZEN ai Inc., Union City, CA

Lara Hudson, Esq., U.S. Small Business Administration, Agency Counsel, Washington, D.C.

DECISION

I. Introduction and Jurisdiction

On October 18, 2024, iZen ai Inc. (Petitioner) appealed the decision of the U.S. Small Business Administration (SBA) Associate Administrator for Business Development (AA/BD) denying Petitioner application for entry into SBA's 8(a) Business Development (BD) program. The AA/BD found that, Mr. Gajanan Bhat, the individual upon whom eligibility is based, did not meet the program requirements. Specifically, SBA determined that Mr. Bhat failed to establish economic disadvantage, as required by title 13 C.F.R. § 124.104. For the reasons discussed *infra*, the appeal is DENIED.

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

II. Background

A. Procedural History

Petitioner applied for admission to the 8(a) BD program in 2022. Mr. Gajanan Bhat is Petitioner's CEO and one of two individuals upon whom Petitioner's claim of eligibility was based. Mr. Bhat was 50% owner of Petitioner. Mr. Laxmish Bhat is Petitioner's President, 50% owner, and the other individual upon whom Petitioner's claim of eligibility is based. The Sections 8(a) and 7(j) of the Small Business Act ("the Act") authorize a Minority Small Business

and Capital Ownership Development program (designated the 8(a) Business Development or “8(a) BD” program for purposes of the regulations in this part). The purpose of the 8(a) BD program is to assist eligible small, disadvantaged business concerns compete in the American economy through business development. On September 29, 2024, SBA's Associate Administrator for Business Development (AA/BD) notified Petitioner its application for admission to the 8(a) BD Program was declined.

The AA/BD based his denial on the finding that Mr. Bhat did not establish that he is economically disadvantaged for purposes of 8(a) BD program certification. The SBA found that Petitioner is not 51% owned and controlled by economically disadvantaged individuals because Mr. Bhat failed to establish economic disadvantage, thus the firm is not 51% owned by a disadvantaged individual. On October 18, 2024, Petitioner filed the instant Appeal challenging the decline decision and submitted additional information in support of the application.

### B. AA/BD's Decision

On September 29, 2024, the AA/BD declined petitioner's application, determining that petitioner is not economically disadvantaged as required by 13 C.F.R. § 124.104. (AR, Exh. 1 at 1).

SBA will presume an individual is not economically disadvantaged if his or her adjusted gross income (AGI) averaged over the three preceding years exceeds \$400,000. (*Id.*, citing 13 C.F.R. § 124.104(c)(3).) The presumption may be rebutted by a showing that this income level was unusual and not likely to occur in the future, that losses commensurate with and directly related to the earnings were suffered, or by evidence that the income is not indicative of lack of economic disadvantage. (*Id.*) The AA/BD concluded that Mr. Bhat's AGI over the three preceding years exceeds the \$400,000 limit based on the figures presented in the application. (*Id.*)

The AA/BD determined Mr. Bhat's average AGI for the previous three years was at least \$475,000, which exceeds the amount the regulation sets as a standard for economic disadvantage. In addition, Mr. Bhat did not rebut the presumption that he was not economically disadvantaged. Specifically, Mr. Bhat did not show how this income level was unusual and not likely to occur in the future, that losses commensurate with and directly related to the earnings were suffered, or by evidence that the income is not indicative of lack of economic disadvantage. In fact, Mr. Bhat reported income from IRA distributions for two out of the past three years. Even if Petitioner made a rebuttal, money could still be withdrawn from the IRA, suggesting it is not a one-time withdrawal. (AR, Exh. 1 at 4.)

Based on the foregoing, the AA/BD determined that Mr. Bhat did not qualify as economically disadvantaged for the purposes of the 8(a) BD program. (*Id.*)

### C. Appeal

On October 18, 2024, Petitioner filed the instant Appeal requesting that OHA reconsider this denial decision and approve iZen's entry into the 8(a) program. Petitioner argues that Mr.

Bhat's AGI for 2021 is an anomaly and should be treated as an exception. The large AGI for 2021 was a result of Mr. Bhat's withdrawal of a large sum from his personal IRA, which he had accumulated over 30 years. This was an isolated event, and given the small remaining balance (Petitioner includes a statement on Mr. Bhat's IRA to confirm this) it is unlikely ever to recur. Further, the full amount of the IRA distribution was lost due to theft. Petitioner includes reports from law enforcement, documenting the theft and explaining that recovery is not possible.

Petitioner thus argues the AA/BD erred in finding Mr. Bhat not economically disadvantaged because his AGI was artificially inflated due to a one time withdrawal from his IRA which is unlikely to recur.

#### D. SBA's Response

On January 13, 2025, SBA responded to the appeal. SBA maintains that the AA/BD's decision to deny Petitioner's application was reasonable since Mr. Bhat failed to establish economic disadvantage. (Response at 1.) The AA/BD properly concluded that Mr. Bhat's average AGI for the three-year period in question exceeded the regulatory threshold. (*Id.* at 6.) During the application process, SBA had requested clarification of the financial data submitted and explained that the AGI attributable to Mr. Bhat for the period in question exceeded the regulatory threshold. (*Id.*) SBA explained further that admission to the 8(a) BD program required 51% ownership of the applicant by social and economically disadvantaged individuals. (*Id.*)

Mr. Bhat provided calculations prepared by his accounting firm claiming that his average AGI was below the threshold, but which excluded IRA withdrawals. (*See* SBA Exhibit 7.) Subsequent submissions from Petitioner demonstrated that the AGI attributable to Mr. Bhat in fact exceeded \$400,000. (*Id.* at 6.) The AA/BD explained that Mr. Bhat's average AGI for the previous three years is at least \$475,000, which is excessive. (*Id.* at 7.) For 2021, Mr. Bhat received \$963,000 in income from IRA distributions, making his total income for that year over \$1 million. (*Id.*) The AA/BD determined based on that excessive income, Mr. Bhat failed to establish that he was economically disadvantaged under that standards set by 13 C.F.R. § 124.104. (*Id.*)

Next, SBA argues Petitioner failed to rebut the presumption that it is ineligible to participate in the 8(a) program. On appeal, Petitioner emphasizes that this IRA distribution was a one-time distribution, and it was lost due to cyber theft. Petitioner has not shown that this income level was unusual and not likely to occur in the future, that losses commensurate with and directly related to the earnings were suffered, or by evidence that the income is not indicative of lack of economic disadvantage. (*Id.* at 7.) Mr. Bhat reported the income from the IRA distributions for two out of the past three years. (*Id.*)

Petitioner has not shown that the AA/BD's calculation of Mr. Bhat's AGI was incorrect, nor has Petitioner demonstrated that he is economically disadvantaged.

### III. Discussion

#### A. Standard of Review

To gain entry to the 8(a) BD program, a concern must be unconditionally owned and controlled by one or more socially and economically disadvantaged individuals. 13 C.F.R. § 124.101. An economically disadvantaged individual is a socially disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared with non-socially disadvantaged competitors in the same or similar line of business. 13 C.F.R. § 124.104(a).

In assessing whether an individual is economically disadvantaged for purposes of the 8(a) program, SBA regulations state that “SBA will presume that an individual is not economically disadvantaged if his or her adjusted gross income averaged over the three preceding years exceeds \$350,000.” 13 C.F.R. § 124.104(c)(3)(i). The presumption may be rebutted by a showing that this income level was unusual and not likely to occur in the future; that losses commensurate with and directly related to the earnings were suffered; or by evidence that the income is not indicative of lack of economic disadvantage. (*Id.*) SBA regulations further state that “[i]ncome received from an applicant or Participant that is an S corporation, LLC or partnership will be excluded from an individual's income where the applicant or Participant provides documentary evidence demonstrating that the income was reinvested in the firm or used to pay taxes arising in the normal course of operations of the firm.” 13 C.F.R. § 124.104(c)(3)(ii).

#### 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 objected to the SBA claim of privilege, and Petitioner introduced new information that addresses the circumstances of the money theft and Mr. Bhat's efforts to recover those funds. The SBA correctly noted that the OHA presiding judge “may not admit evidence beyond the written administrative record nor permit any form of discovery unless he or she first determines that the petitioner, upon written submission, has made a substantial showing, based on credible evidence and not mere allegation, that the Agency determination in question may have resulted from bad faith or improper behavior.” 13 C.F.R. § 134.407(a).

Petitioner does not advance an argument that supports admission of the new information. Further, I find that SBA's claims of privilege are proper under the deliberative process and attorney client privileges, and I thus approve SBA's claims of privilege. *Matter of R.A. Quarshie*

& Assoc., Inc., SBA No. BDPE-605 (2022). I therefore find that the Administrative Record is complete as required by 13 C.F.R. § 134.406(c)(3).

I agree with SBA that Petitioner's Exhibits are not properly before OHA. Exhibit 4-b is not included in the Administrative Record because petitioner did not previously provide it to SBA in support of Petitioner's 8(a) application, and the AA/BD thus did not consider Exhibit 4-b in reaching her decision. Accordingly, Petitioner's Exhibit 4-b is EXCLUDED from the record.

### C. Analysis

OHA must sustain SBA's denial of Petitioner's 8(a) application unless a review of the written administrative record demonstrates the SBA acted arbitrarily, capriciously, or contrary to law in concluding Mr. Bhat was not economically disadvantaged. 13 C.F.R. § 134.406(b). Such a review is narrow and does not permit a reviewing authority to substitute its own judgment for that of the SBA. The review should examine whether the SBA considered all of the facts presented and correctly applied the applicable laws and regulations to those facts in deciding whether or not to approve Petitioner's 8(a) application. Then, the review must examine if there was a clear error of judgment by the SBA in making the determination before a finding of arbitrary and capricious can be made. *Matter of Information Sciences Corp.*, SBA No. MSBE-563, at 4 (1996) citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

A clear error of judgment can be found if the SBA fails to properly apply the law and regulations to the facts of the case; fails to consider an important aspect of the problem; offers an explanation for its determination that runs contrary to the evidence; or provides an implausible explanation that is more than a difference in the views of the SBA and the administrative law judge. In sum, the SBA must articulate a satisfactory explanation for its action, including a rational connection between the facts found and its determination. *See Id.*

A concern meets the basic requirements for admission to the 8(a) program if it is a small business unconditionally owned and controlled by one or more socially and economically disadvantaged individuals. 13 C.F.R. § 124.101. An economically disadvantaged individual is a socially disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged. 13 C.F.R. § 124.104(a). In considering diminished capital and credit opportunities, SBA will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including income for the past three years, personal net worth, and the fair market value of all assets, whether encumbered or not. An individual who exceeds any one of the thresholds set forth in the regulation for personal income, net worth or total assets will generally be deemed to have access to credit and capital and not economically disadvantaged. 13 C.F.R. § 124.104(c). SBA will presume that an individual is not economically disadvantaged if their adjusted gross income for the three previous years exceeds \$400,000.00. 13 C.F.R. § 124.104(c)(3)(i). The presumption may be rebutted by a showing the income level was unusual and not likely to occur in the future, that the individual suffered losses commensurate with and directly related to the earnings, or by evidence that the income is not indicative of lack of economic disadvantage. *Id.*

The principal issue presented here is whether the AA/BD properly determined that Mr. Bhat is not economically disadvantaged because his AGI over the preceding three years exceeded the \$400,000 threshold allowable for program qualification. The AA/BD based these calculations on tax records Petitioner itself provided.

Generally, SBA will exclude funds invested in an IRA or other official retirement account when determining an individual's net worth. 13 C.F.R. § 124.104(c)(2)(ii). Based on information provided by petitioner, Mr. Bhat voluntarily withdrew funds from his IRA for personal use, and after withdrawing those funds, reported them on his personal income tax return. These facts surrounding the withdrawal do not support the exclusion of the IRA funds. The events taking place after withdrawal, i.e. theft, are irrelevant because they are not a regulatory ground for excluding income. The burden was on Mr. Bhat to demonstrate the circumstances surrounding the IRA withdrawal to support exclusion, such as reinvestment in the firm, or the payment of taxes arising in the normal course of business operations. Mr. Bhat failed to show any nexus between the IRA withdrawals and payment of taxes or reinvestment in the firm.

The fact that the funds are no longer accessible does not change the fact that Mr. Bhat withdrew and used the funds, even if they were ultimately stolen, nor does this support a claim that the use of the funds is indicative of lack of economic disadvantage. Petitioner seeks exclusion of the funds withdrawn from his IRA that were lost due to theft subsequent to the withdrawal. Nothing in the regulations support this argument.

The AA/BD appears to have considered all of the facts in the record and correctly applied the laws and regulations applicable to these proceedings to those facts prior to denying eligibility. Accordingly, I find that the decision to deny Petitioner admission to the 8(a) BD program was not arbitrary, capricious, or contrary to law. I DENY the appeal and AFFIRM the AA/BD's decision.

#### IV. Conclusion

The AA/BD conducted a thorough review of all the evidence, based the conclusion on that evidence; and provided a clear rationale for the conclusion. Petitioner has not demonstrated the AA/BD's decision was arbitrary, capricious, or contrary to law. Accordingly, the appeal is DENIED. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.409(a).

CHRISTOPHER HOLLEMAN  
Administrative Judge