

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

IN THE MATTER OF:

The CTS Group LLC,

Petitioner

SBA No. BDPT-621

Decided: April 29, 2025

APPEARANCES

Calvin L. Scott, Jr., Managing Member, The CTS Group LLC, Maryland

Lane M. Siems, Esq., Office of General Counsel, U.S. Small Business Administration,
Washington, D.C.

DECISION¹

I. Introduction and Jurisdiction

On December 10, 2024, The CTS Group LLC (Petitioner) appealed a decision of the U.S. Small Business Administration (SBA) Acting Associate Administrator for Business Development (AAA/BD) terminating Petitioner's participation in the 8(a) Business Development (BD) program. The AAA/BD found that termination was warranted because Petitioner failed to prove that it is owned and controlled by one or more disadvantaged individuals. For the reasons discussed *infra*, the AAA/BD's determination is supported by the record, and is not arbitrary, capricious, or contrary to law. The appeal therefore is 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) adjudicates appeals of 8(a) termination decisions pursuant to 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 receiving the AAA/BD's determination, so the appeal is timely. 13 C.F.R. § 134.404. Accordingly, this matter is properly before OHA for decision.

¹ This decision was originally issued under the confidential treatment provisions of 13 C.F.R. § 134.205. After receiving and considering one or more timely requests for redactions, OHA now issues this redaction decision for public release.

II. Background

A. The *Ultima* Decision

On July 19, 2023, the U.S. District Court for the Eastern District of Tennessee issued a decision in *Ultima Servs. Corp. v. U.S. Dep't of Agric., et al.*, 683 F. Supp. 3d 745 (E.D. Tenn. 2023). The decision addressed the rebuttable presumption, set forth in SBA regulations at 13 C.F.R. § 124.103(b), that individuals who are members of certain minority groups are presumed to be socially disadvantaged for purposes of the 8(a) program. The Court found that the presumption violates the Constitutional right to equal protection of the law, and enjoined SBA from utilizing the presumption in administering the 8(a) program. To comply with the Court's ruling, SBA announced that all 8(a) participants whose program eligibility was based upon the presumption of social disadvantage would be required to submit a Social Disadvantage Narrative (SDN) establishing individual social disadvantage in order to remain in the 8(a) program.

B. Petitioner's SDNs

On August 22, 2023, SBA notified Petitioner that:

Our records indicate that [Petitioner's] eligibility is based on an individual or individual(s) who relied upon the presumption of social disadvantage. Therefore, to maintain your firm's continuing eligibility for the 8(a) BD program, and receipt of contracts authorized under the 8(a) Program (15 U.S.C. 637), **[an SDN] from your firm's qualifying owner(s) is required.**

(Administrative Record (AR) Supp., at 1 (emphasis in original).)

On September 26, 2023, Petitioner resubmitted an Economic Disadvantage Narrative on behalf of its owner and Managing Member, Mr. Calvin L. Scott, Jr. (AR, Exh. P.) SBA responded that such a narrative “d[oes] not have the same requirements as [an SDN], and is insufficient in meeting the preponderance of the evidence standard that now needs to be met.” (AR, Exh. O.) SBA attached a copy of its “Guide for Writing a Social Disadvantage Narrative,” and instructed Petitioner to submit a proper SDN within two business days. (*Id.*)

Petitioner did not respond by the specified deadline, and on November 3, 2023, SBA again directed that Petitioner submit an SDN within two business days. (AR, Exh. M.) Mr. Scott replied that, upon review of information provided by SBA, he was “comfortable that [he] can meet the requirements with [his] narrative.” (*Id.*) Mr. Scott submitted an SDN on November 3, 2023. (AR, Exh. N.)

On January 29, 2024, SBA informed Petitioner that it was suspended from participation in the 8(a) program. (AR, Exh. L.) Petitioner complained that it had not received further communications from SBA after submitting the SDN on November 3, 2023. (*Id.*) SBA then advised that Mr. Scott's SDN did not “meet the preponderance of the evidence standard, as there is no indication of any bias, prejudice, and discrimination directed towards [Mr. Scott] that has

resulted in negative impact of any kind.” (AR, Exh. K.) SBA provided additional “notes to consider” in drafting an SDN. (*Id.*) The next day, SBA offered further comments on the SDN:

[Although] SBA's info regarding [SDNs] mentions that at least two incidents should be provided, you merely provided one. And that one incident presents no instance of chronic and substantial bias, prejudice, and discrimination catalyzing negative impact. You [*i.e.*, Mr. Scott] mention that all of the individuals involved were Caucasian. However, you fail to mention any names and any speech/action that evidences bias. The mere fact that those you were dealing with are Caucasian is not sufficient in meeting the preponderance standard.

(AR, Exh. J.)

On February 5, 2024, Petitioner submitted a revised version of Mr. Scott's SDN. (AR, Exh. H.) Petitioner subsequently requested feedback on the document. (AR, Exh. G.) On March 13, 2024, SBA provided comments on the revised SDN, explaining that there were still “questions [that] need to be addressed” because the SDN, as revised, did “not identif[y] any bias, prejudice, and discrimination directed toward [Mr. Scott].” (*Id.*)

On March 18, 2024, Petitioner submitted another revised version of Mr. Scott's SDN. (AR, Exh. F.) Later that same day, SBA opined that the revised SDN remained insufficient, adding that:

In order to successfully meet the preponderance of the evidence standard SBA need[s] to clearly see that you have suffered chronic and substantial bias, prejudice, and discrimination based upon one or more objective distinguishing features (*i.e.*, what others see about you when you “walk into a room”) which has had a negative impact upon your entry into or advancement in the business world.

(AR, Exh. E.)

C. Final Revised SDN

On March 27, 2024, Petitioner submitted another revised SDN for Mr. Scott (hereafter, the “Final Revised SDN”). Petitioner described two examples of discrimination towards Mr. Scott:

During the fiscal year ending [XXXXX], [Mr. Scott] inquired with [a prime contractor to which Petitioner was serving as subcontractor] about the terms of the prime contract and the ability for me to add employees to my subcontract [XXXXXXXXXXXXXXXXXXXX]. The [procuring agency] was pleased with [Petitioner's] contributions and expertise and wanted [XXXXXXXXXXXXXXXXXXXX]. [Mr. Scott] sourced potential employees and discussed their potential with our main customer at [the procuring agency]. Despite demonstrating exceptional expertise and contributing significantly, [Petitioner's] efforts to expand our role on the contract and add more value were unjustly denied. [Three officials of the prime

contractor] denied me the opportunity to add employees under the contract. The bias [Mr. Scott] faced was primarily rooted in age discrimination and a prejudiced perception of [Petitioner's] novelty in the government contracting space. Through conversations that occurred at different dates in [XXXX], these gentlemen specifically cited [Mr. Scott's] age [XXXXXXXXXX] and [Petitioner's] relative lack of past performance as reasons for denying the expansion of our subcontract agreement. [Mr. Scott] started [Petitioner] in 2007 and this time period was [XXXXXXXXXXXX]. It was suggested by [a prime contractor official] that I should just bring any potential hires to [the prime contractor] and [the prime contractor] would hire them if there was a fit and funding available. At the time I felt [the prime contractor] as a worldwide large contractor was bias[ed] against a young black owned business striving to grow within a competitive landscape dominated by established contractors.

...

[Mr. Scott] prepared [Petitioner's] response to [a new] solicitation [XXXXXXXXXXXX], talked with former colleagues about coming to work for [Petitioner] and submitted my proposal. [Petitioner] met all of the requirements set forth in the [solicitation] to be awarded the work to support the [procuring agency's] [XXXXXXXXXXXXXXXXXXXX]. The qualifications of the personnel [Petitioner] proposed not only matched but, in some instances, exceeded the requirements in the statement of work. [Petitioner] proposed [XXXXXXXXXXXXXXXXXXXX] and other expertise currently lacking in the department. Expertise that the current federal employees nor contractors on site could not provide. During the evaluation period the contracting officer verbally indicated to [Mr. Scott] that [Petitioner] was more than likely to win the new contract. A few days later, unfortunately, [Mr. Scott] was informed that despite meeting the requirements and having the most qualified personnel, the contract would go to [a competitor]. At that time, it was not disclosed what the final decision making process was. [Mr. Scott] learned that this prejudice decision was justified by labeling [him] as being the "new guy" by [two employees of the procuring agency]. This decision was influenced by discrimination, prejudice and bias against [Mr. Scott] as young, qualified, minority owned business striving to grow within the government contracting arena. The contract award was clearly racially bias[ed] by awarding a prime contract based on their personal relationships rather than merit. [Petitioner] had superior qualifications and expertise that was overlooked in favor of [the other company], despite a proposal offering [XXXXXXXXXXXXXXXXXXXX]. [Neither the successful offeror] nor other contractors proposing or currently providing contractor support in the building were going to bring the expertise and qualifications that [Petitioner] proposed. This underscores the fact that the decision was not based on merit. . . . [Petitioner] could not afford to protest the contract award and had to accept the outcome.

...

These two instances/experiences can serve as evidence of systematic bias within the government contracting industry, particularly against minority owned businesses which to my understanding is the sole purpose of the SBA 8(a) Program. To highlight the pattern of decisions made by predominately white men in favor of long standing relationships over capabilities and results. These instances display the prejudice that [Petitioner] faced and why [Petitioner] continues to struggle today as we were denied opportunities to expand the initial unique subcontract agreement and subsequently the larger contract award. Overt acts of racial bias [are] rarely seen these days. Its experienced through small acts that keep minority small businesses from achieving their full potential and disrupts the very foundation the SBA 8(a) Program aims to uphold.

(AR, Exh. D.)

D. Letter of Intent to Terminate

On April 25, 2024, SBA informed Petitioner that it planned to terminate Petitioner's participation in the 8(a) program. (Letter of Intent to Terminate (Apr. 25, 2024), at 1.) SBA stated that, despite several requests, Petitioner had not submitted an SDN sufficient to show Mr. Scott's individual social disadvantage. (*Id.* at 1-2.) “Therefore, SBA cannot conclude whether [Petitioner] continues to be owned and controlled by socially disadvantaged individuals.” (*Id.* at 2.) The letter warned that “SBA will move forward with a final termination if you are not able to establish your individual social disadvantage” within 30 days. (*Id.*)

E. Notice of Termination

Petitioner did not respond to the Letter of Intent to Terminate. On October 28, 2024, the AAA/BD terminated Petitioner's participation in the 8(a) program. (AR, Exh. A.) The AAA/BD explained that, because Petitioner did not demonstrate that Mr. Scott is socially disadvantaged, Petitioner was being terminated due to “[f]ailure by the concern . . . to maintain ownership, full-time day-to-day management, and control by disadvantaged individuals.” (*Id.* at 1, quoting 13 C.F.R. § 124.303(a)(3).)

The AAA/BD noted that, after the *Ultima* decision, SBA could no longer presume that members of certain racial groups are socially disadvantaged. (*Id.*) As a result, SBA now requires that 8(a) participants that previously relied on the presumption provide an SDN to remain eligible. (*Id.*) Here, SBA first requested an SDN from Petitioner on August 22, 2023. (*Id.* at 2.) Petitioner submitted a response, but SBA required additional information to confirm Petitioner's eligibility. (*Id.*) SBA thereafter sent several requests and communications to Petitioner warning that Petitioner's participation in the 8(a) program would be suspended, and ultimately terminated, without a satisfactory SDN. (*Id.*) On April 25, 2024, SBA formally proposed to terminate Petitioner from the 8(a) program unless Petitioner complied with SBA's instructions. (*Id.*) As of October 2024, though, “SBA still has not received the additional information required for your social disadvantage review.” (*Id.*)

The AAA/BD summarized each version of Mr. Scott's SDN. (*Id.* at 2-14.) With regard to the Final Revised SDN submitted on March 27, 2024, the AAA/BD found the first example unpersuasive to show social disadvantage, because Petitioner did not demonstrate that the prime contractor's decision not to enlarge Petitioner's subcontract stemmed from any racial or ethnic prejudice or cultural bias. (*Id.* at 12.) The AAA/BD posited that the prime contractor may have perceived Mr. Scott's actions as an attempt to circumvent the prime contractor by directly “soliciting your Prime's customer for work.” (*Id.*) The AAA/BD found the second example to be “conclusory,” as the mere fact that Petitioner did not win a particular contract does not establish that “racial bias played a part in the decision.” (*Id.* at 14.) Moreover, the Final Revised SDN itself suggests that, instead of being motivated by prejudice against Mr. Scott, the procuring agency may have preferred to “award to a firm it was familiar with rather than a relative newcomer,” such as Petitioner. (*Id.*)

F. Appeal

On December 10, 2024, Petitioner filed the instant appeal. Petitioner complains that SBA did not offer Petitioner advice or recommendations for correcting the Final Revised SDN. (Appeal at 4.) Indeed, apart from “the SBA proposal to terminate [Petitioner] on April 25, 2024,” Petitioner received no other communications from SBA during the time period between Petitioner's submission of the Final Revised SDN and the AAA/BD's Notice of Termination. (*Id.*) As such, Petitioner maintains, Petitioner was “unaware that the [Final Revised SDN] was not deemed sufficient” and was “unable to respond to comments” until Petitioner received the termination decision. (*Id.*) As relief, Petitioner requests that the Final Revised SDN be given “another review by additional SBA personnel.” (*Id.* at 5.)

G. SBA's Response

On January 27, 2025, SBA responded to the appeal. SBA argues that the AAA/BD properly, and in accordance with the law, terminated Petitioner from the 8(a) program because Petitioner's Final Revised SDN does not meet the preponderance of evidence standard. (Response at 4.)

When reviewing a claim of individual social disadvantage, SBA applies 13 C.F.R. § 124.103(c). (*Id.*) The regulation stipulates that social disadvantage must be “chronic and substantial, not fleeting or insignificant.” (*Id.* at 5, quoting 13 C.F.R. § 124.103(c)(2)(iii).) Furthermore, there must be facts and evidence demonstrating that the individual experienced “social disadvantage that has negatively impacted his or her entry into or advancement in the business world.” (*Id.*, quoting 13 C.F.R. § 124.103(c)(3).) The regulation makes clear that “SBA may disregard a claim of social disadvantage where a legitimate alternative ground for an adverse employment action or other perceived adverse action exists and the individual has not presented evidence that would render his/her claim any more likely than the alternative ground.” (*Id.*, quoting 13 C.F.R. § 124.103(c)(3)(ii).) Additionally, there is no requirement that SBA provide guidance or otherwise actively assist an 8(a) applicant/participant with submission of such evidence. (*Id.* at 6.)

In SBA's view, Petitioner's main argument on appeal is that the AAA/BD wrongly terminated Petitioner's participation without providing Petitioner feedback and guidance on the Final Revised SDN. (*Id.*) Petitioner, though, cites no authority for the proposition that SBA was required to offer Petitioner such assistance. (*Id.* at 6-7.) Furthermore, over the course of several months, SBA did provide Petitioner feedback on multiple prior versions of the SDN, yet Petitioner failed to meaningfully improve the document. (*Id.* at 8.) In any event, the AAA/BD could properly conclude, based on her review of the Final Revised SDN, that it does not meet the evidentiary standard of 13 C.F.R. § 124.103(c)(1). (*Id.* at 7.) The Final Revised SDN does not articulate even one example clearly connecting a negative business/professional outcome with Mr. Scott's membership in a socially disadvantaged group, nor does the Final Revised SDN demonstrate that any social disadvantage suffered by Mr. Scott was ““chronic and substantial” and not “fleeting or insignificant.” (*Id.*, quoting 13 C.F.R. § 124.103(c)(2)(iii).)

III. Discussion

A. Standard of Review

A participant in the 8(a) program ordinarily may remain in the program for nine years so long as the concern maintains its program eligibility. 13 C.F.R. § 124.2. SBA may, however, terminate a concern's participation in the 8(a) program prior to the expiration of the program term for good cause. 13 C.F.R. § 124.303. Under SBA regulations, “good cause” for termination exists, *inter alia*, if an 8(a) participant “[f]ail[s] . . . for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, full-time day-to-day management, and control by disadvantaged individuals.” 13 C.F.R. § 124.303(a)(3).

SBA regulations require that, when SBA believes an 8(a) participant should be terminated from the program, SBA must notify the concern in writing, and must permit the concern a period of at least 30 days to submit a written response “explaining why the proposed ground(s) should not justify termination.” 13 C.F.R. § 124.304(b)(1). After considering any response to a proposed termination, the AA/BD “will then make a decision whether to . . . terminate the concern.” 13 C.F.R. § 124.304(c). The AA/BD's decision is final, subject to appeal to OHA. 13 C.F.R. § 124.304(e).

OHA may overturn the AA/BD's decision to terminate a concern from the 8(a) program only if OHA concludes that the determination was arbitrary, capricious, or contrary to law. 15 U.S.C. § 637(a)(9)(C); 13 C.F.R. § 134.406(b). So long as the decision was reasonable, it must be upheld, even if it differs from the conclusion that OHA might have reached. 13 C.F.R. § 134.406(b)(2); *Matter of 4-D Constr., Inc.*, SBA No. BDPT-535, at 6 (2014).

B. Analysis

I see no merit to this appeal. Petitioner does not dispute that, following the *Ultima* decision, SBA could properly require that Petitioner, like other 8(a) participants whose program eligibility had been based upon the presumption of social disadvantage, must submit a Social Disadvantage Narrative (SDN) establishing individual social disadvantage in order to remain in the 8(a) program. Section II.F, *supra*. Furthermore, Petitioner does not dispute that, in its Letter

of Intent to Terminate, SBA expressly warned Petitioner that “SBA will move forward with a final termination if you are not able to establish [Mr. Scott's] individual social disadvantage” within 30 days, and Petitioner failed to respond. Sections II.D — II.F, *supra*. Nor does Petitioner argue that the AAA/BD erred in finding Mr. Scott's Final Revised SDN unpersuasive to show that he suffered chronic and substantial social disadvantage. Section II.F, *supra*. As the AAA/BD explained in her decision, Mr. Scott's Final Revised SDN set forth two examples of alleged discrimination towards Mr. Scott, but in both instances, it was not evident that the negative outcome described was attributable to bias rather than legitimate, non-discriminatory reasons. Sections II.C and II.E, *supra*. SBA regulations are clear that “SBA may disregard a claim of social disadvantage where a legitimate alternative ground for an adverse employment action or other perceived adverse action exists and the individual has not presented evidence that would render his/her claim any more likely than the alternative ground.” 13 C.F.R. § 124.103(c)(3)(ii).

Rather than arguing that Mr. Scott's Final Revised SDN was sufficient to meet SBA requirements, Petitioner instead contends that SBA arbitrarily failed to provide Petitioner guidance for redrafting the document. Section II.F, *supra*. As SBA observes, however, although SBA regulations indicate that “SBA may request an applicant to provide additional facts to support his or her claim of social disadvantage,” there is no requirement that SBA must do so. 13 C.F.R. § 124.103(c)(4). Moreover, and contrary to the premise of the appeal, the record reflects that, over the course of several months, Petitioner submitted multiple versions of Mr. Scott's SDN — on September 26, 2023; November 3, 2023; February 5, 2024; and March 18, 2024 — prior to the submission of the Final Revised SDN on March 27, 2024, with SBA repeatedly offering guidance as to how to correct and improve the document. Sections II.B and II.C, *supra*. Under these circumstances, Petitioner has not shown that SBA erred by declining to offer further opportunities to revise the SDN after March 27, 2024.

IV. Conclusion

Petitioner has not demonstrated the AAA/BD's decision was arbitrary, capricious, or contrary to law. Accordingly, the appeal is DENIED. Subject to 13 C.F.R. § 134.409(c), this is the final decision of the U.S. Small Business Administration. *See* 15 U.S.C. § 637(a)(9)(D); 13 C.F.R. § 134.409(a).

KENNETH M. HYDE
Administrative Judge