

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

IN THE MATTER OF: .
.

Joint Military Development Services, LLC .

SBA No. BDP-282 .

Petitioner .

Decided: March 26, 2008

ORDER DISMISSING APPEAL

I.

On February 8, 2008, Joint Military Development Services, LLC (Petitioner) appealed a December 27, 2007 decision by Respondent Small Business Administration (SBA), denying Petitioner admission into the 8(a) Business Development Program.

On September 30, 2007, the SBA denied Petitioner's 8(a) application. It determined Petitioner's owner was neither economically nor socially disadvantaged (Initial Determination).

Petitioner then requested the SBA reconsider its denial. On December 27, 2007, the SBA determined (1) Petitioner's owner was not socially disadvantaged; and (2) Petitioner did not meet the potential for success requirement in 13 C.F.R. § 124.107. The SBA had not determined Petitioner lacked "potential for success" in its Initial Determination.

On February 19, 2008, the SBA was ordered to brief whether there is jurisdiction to hear Petitioner's appeal based on Petitioner's appeal allegation that SBA added the conclusion Petitioner lacked the potential for success to preclude Petitioner from filing an appeal.* *See* 13 C.F.R. § 134.405(a)(1).

On March 18, 2008, SBA filed its brief. SBA asserts Petitioner did not provide any evidence to support its assertion that SBA added the "potential for success" determination to preclude Petitioner from filing an appeal. Further, SBA asserts it is allowed on reconsideration to approve the application, deny it on the same grounds as the Initial Determination, or deny it on other grounds.

* Petitioner appears to concede that a determination that Petitioner "lacked the potential to succeed" may not be appealed. Appeal Petition, at 2.

On March 25, 2008, Petitioner responded to SBA's jurisdictional brief. Petitioner asserts the SBA failed to provide specific reasons for concluding Petitioner failed to meet the potential for success requirement. Instead, without requesting additional information from Petitioner, SBA summarily concluded Petitioner lacked the potential to succeed to preclude Petitioner from filing an appeal at SBA's Office of Hearings and Appeals. Petitioner argues it does have the potential to succeed and the financial data Petitioner submitted to SBA shows Petitioner has "sustained operations and routinely paid its debt."

Petitioner also argues the Reconsideration Determination is contradictory. On one hand, SBA finds Petitioner's owner is not socially disadvantaged because her advancement in the business world has not been impaired by her gender because Petitioner's sales have increased significantly from 2004 to 2006. On the other hand, SBA finds Petitioner lacks the potential for success because there are questions as to whether Petitioner can sustain its operations because of its substantial business losses in 2006.

II.

A.

I must decline to accept jurisdiction to hear this appeal because the SBA determined Petitioner did not meet the potential for success requirement.

An 8(a) applicant may only appeal a denial of its application if the denial was based solely on a negative finding of social disadvantage, economic disadvantage, ownership, control, or any combination of these four criteria. A denial that is based at least in part on any other criterion is not appealable and is the final SBA decision. 13 C.F.R. § 124.206(a).

The Administrative Law Judge selected to preside over an appeal must decline to accept jurisdiction over the appeal if an 8(a) application is denied 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 Matter of Woodsman Construction, Inc.*, SBA No. BDP-263 (2007) (holding there was no jurisdiction even when one ground for denial of admission was based on the appealable ground of a negative finding of economic disadvantage, because the other ground for denial was the lack of potential for success); *see also* Small Business Act, § 8(a)(9), 15 U.S.C. § 637(a)(9).

B.

SBA regulations provide that if the SBA denies an application *solely* on issues not raised in the initial determination, the applicant may ask for reconsideration as if it were an initial determination. 13 C.F.R. § 124.205(c). Here, because the SBA adhered to its initial determination that Petitioner's owner was not socially disadvantaged and added the

additional conclusion that Petitioner lacked the “potential for success,” Petitioner is not permitted an additional opportunity to request reconsideration.

In its response to SBA’s jurisdictional brief, Petitioner argues it does have the potential for success and the SBA’s conclusion to the contrary is flawed. However, I cannot consider the merits of Petitioner’s argument that it has the potential to succeed because I do not have jurisdiction to hear the appeal.

Petitioner contends the SBA “threw in the ‘potential for success’ rationale as an additional basis for denying [Petitioner’s] application in an effort to preclude Petitioner from filing an Appeal to the Office of Hearings and Appeals,” thus, its appeal should be heard. Appeal Petition, at 2. Petitioner, however, does not provide any evidence to warrant that conclusion. Thus, the allegation has not been established.

Accordingly, because the SBA based its determination in part on Petitioner’s lack of “potential for success,” an eligibility criterion that is not appealable, there is no jurisdiction to hear this appeal and it must be dismissed. 13 C.F.R. § 134.405(a)(1).

For these reasons, I decline to accept jurisdiction to hear the appeal and Petitioner’s appeal is **DISMISSED**.

Subject to 13 C.F.R. § 134.409(c), this is the final decision of the Small Business Administration. *See* Small Business Act, § 8(a)(9)(D), 15 U.S.C. § 637(a)(9)(D); 13 C.F.R. § 134.409(a).

RICHARD S. ARKOW
Administrative Law Judge