

## **PROPONDERANCE OF THE EVIDENCE**

**How does SBA propose to define “preponderance “concerning the evidence that must be provided in order to establish social disadvantage due to membership in a non-designated group?**

**Generally, preponderance is evidence of a quality and quantity which leads the decision maker to objectively conclude that the existence or truth of the fact(s) asserted is more probable than not.**

**What evidence could an individual applicant who is not a designated group member provide to show social disadvantage under such a preponderance of evidence test?**

**SBA evaluates a claim of individual social disadvantage based on all of the elements found in 13 CFR 124.103c(2). The new regulation changes the evidentiary standard, specifically the quantity and quality of evidence that is necessary to prove an individual case of social disadvantage. While the criteria remains basically the same, the weight of evidence showing disadvantage in total no longer needs to be “clear and convincing,” but rather just a preponderance.**

**Evidence of individual social disadvantage must indicate the following elements:**

- 1. At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged.**
- 2. Personal experience of social disadvantage stemming from the objective distinguishing feature of features set forth in the preceding paragraph. The experiences must have been an American society, not in other countries, and must have been substantial and chronic.**
- 3. Negative impact on entry into or advancement in the business world because of the disadvantage. SBA considers any relevant evidence in assessing this element. In every case, however, SBA considers education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.**

**What type of evidence can be used to assist in meeting the burden of proof?**

**Court or administrative findings of discrimination.**

**Statements made under oath to an investigator or in a court or administrative proceeding.**

**Affidavits or statements sworn under oath by an individual owner which have specific recurrent incidents of discrimination or a pattern of discrimination over a significant period of time. Applicant statements alone, without supporting or corroborating evidence will be given less weight than if corroborated.**

**Sworn affidavits or statements from independent third parties who do not have an interest in or close relationship to the owner, corroborating or supporting assertions made by the owner.**

**Statements by relatives or friends of the owner will have less weight than statements by independent third parties.**

**Documentary evidence which corroborates or supports assertions made by an owner regarding specific incidents or a pattern of discrimination. Such documentation could include such items as:**

- Personal records**
- Payroll records**
- Rejection letters on job applications**
- Denials of credit applications**
- Documents relating to rejected contract officer, i.e., bid abstracts, Solicitations, etc.**
- Contemporaneous records memorializing meetings, conversations, negotiations, telephone calls, etc.**
- Documents setting forth company policy(ies) which are alleged to be discriminatory.**

**Evidence which tends to show generalized patterns of discrimination against non-designated group or statistical data showing that businesses owned by a specific non-designated group are disproportionately underrepresented in a particular industry may be used to augment an individual's case. Statistics and generalized patterns are not sufficient by themselves to establish a case of individual social disadvantage. However, an individual's statement of personal experiences in combination with the generalized evidence may be sufficient to demonstrate social disadvantage.**

**Must an individual who is not a member of a designated group show discrimination in education, employment and business history in order to show negative impact on entry into or advancement in the business world because of the disadvantage?**

**SBA will consider any relevant evidence in assessing this element. In every case however, SBA will consider the experiences of the individual, where applicable, in education, employment, and business history to see if the totality of the circumstances shows disadvantage in entering into or advancing in the business world. Evidence relating to all three should be addressed, if applicable. Each applicable circumstance should demonstrate how it has affected the individual's entrance into and advancement in the business world. The failure to establish disadvantage in any one or even two areas (i.e., education, employment, or business history) does not prevent an individual from meeting the negative impact requirement as long as the totality of the circumstances experienced by the individual demonstrates such disadvantage.**