



**U.S. Department of
Transportation**

Office of the Secretary
Of Transportation

Departmental Office of Civil Rights
1200 New Jersey Avenue, S.E., W76-401
Washington, DC 20590

January 6, 2023

Docket No. 23-0002

Dmitriy Hanuka
Kiddush HaShem, Inc. d/b/a Three D Media
[REDACTED]
Irvine, CA 92612

Dear Mr. Hanuka:

This letter concerns the California Department of Transportation's (Caltrans) June 23, 2022 denial of your firm Kiddush HaShem, Inc. d/b/a Three D Media's (Three D Media) application for Disadvantaged Business Enterprise (DBE) certification under the DBE program regulation at 49 CFR Part 26. Caltrans concluded that you are not socially and economically disadvantaged (SED). We affirm.

You do not claim membership in any of the groups whose members are rebuttably presumed SED.¹ Rather, you seek to make an individualized showing of social and economic disadvantage based on your Jewish religion, Russian background, and Middle Eastern appearance.² Section 26.67(d) and Appendix E require applicants to provide sufficient information – including narratives describing the applicant's social and economic disadvantage – that would allow a certifier to conclude that an applicant has proven, by a preponderance of the evidence, that the applicant meets the requirements of section 26.67(d) and Appendix E.

You claim that you are SED because of your Jewish religion, Russian background, and Middle Eastern appearance. You did not submit narratives describing those disadvantages, as required by Appendix E.³ Instead, you answered questions posed by Caltrans in a supplement to the on-site report.⁴ The responses you provided are general in nature. For example, in response to the question about experiences directly dealing with your education that discouraged you from pursuing a professional or business education, you stated "Being a minority in school, it was always harder to advance."⁵ In response to the questions asking you to describe what impaired

¹ See sections 26.5 and 26.67(a).

² See section 26.67(d) and Appendix E.

³ Caltrans could have denied your application based on that fact alone.

⁴ See Supplement to On-Site Report Proving Social and Economic Disadvantage (undated). The questions ask for the types of evidence described in Appendix E.

⁵ Id. at 2.

your ability to compete in the free enterprise system due to diminished capital and credit opportunities, you stated that “Not being able to get all the equipment necessary when I started the business or enough money to advertise to grow the business faster” and “I came to USA as a refugee with no money or capital to help me advance in business.”⁶ You provided no specific examples about how your Jewish religion, Russian background, and Middle Eastern appearance contributed to the challenges you described. They do not constitute “sufficient information” under section 26.67(d).⁷

We find substantial evidence supports Caltrans’s decision that you do not meet the requirements for an individualized showing of social and economic disadvantage. Thus, we affirm. See section 26.89(f)(1). This decision is administratively final and not subject to petitions for reconsideration.⁸

Sincerely,

Samuel F. Brooks
DBE Team Lead
Disadvantaged Business Enterprise Division

cc: Caltrans

⁶ Id. at 3.

⁷ See 17-0090 US Comfort Building Services (Nov. 20, 2017) (US Comfort) for examples of social disadvantage that are “sufficient information” for demonstrating that an owner’s “objective distinguishing feature(s)” negatively impacted the owner’s ability to advance in or enter into the business world. See section 26.67(d) and Appendix E. In US Comfort, the Tunisian American owner stated that his co-workers called him “camel” after learning of his Arab descent, classmates repeatedly told him he looks like a terrorist, a professor regularly asked him if he was an illegal immigrant, and a prospective client told him she would not hire him if he was Muslim. We reversed the certifier’s finding of non-social disadvantage as unsupported by substantial evidence. We affirmed the certifier’s finding of non-economic disadvantage because the owner provided no evidence other than a personal net worth statement and the firm’s revenue for the three years immediately prior to applying for DBE certification.

⁸ Three D Media may reapply after the applicable waiting period expires.