

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

VSBC Appeal of:

LanguageArts LLC,

Appellant

SBA No. VSBC-404-A

Decided: October 10, 2024

APPEARANCE

Alen Keshishyan, Chief Information Officer, LanguageArts LLC, Chatsworth, California

DECISION

I. Introduction and Jurisdiction

On August 6, 2024, LanguageArts LLC (Appellant) appealed a decision of the U.S. Small Business Administration (SBA), denying Appellant's application for certification as a Veteran-Owned Small Business (VOSB). SBA found that Appellant did not demonstrate that it is fully controlled by one or more veterans, because Appellant's veteran majority owner does not have complete access to Appellant's bank account. On appeal, Appellant maintains that the denial was erroneous, and requests that SBA's Office of Hearings and Appeals (OHA) reverse. For the reasons discussed *infra*, the appeal is granted.

OHA adjudicates VOSB status appeals pursuant to the Small Business Act of 1958, 15 U.S.C. 631 *et seq.*, and 13 C.F.R. parts 128 and 134 subpart K. Appellant timely filed the appeal within 10 business days after receiving the denial notice on August 5, 2024. 13 C.F.R. § 134.1104(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. The Case File

Appellant is a limited liability company (LLC) established in the state of California. (Case File (CF), Exh. 33.) In May 2024, Appellant applied for certification as a VOSB, and submitted various supporting documents to SBA. Appellant is 57.5% owned by Mr. Spencer H. Kim. (CF, Exh. 31, at 23.) Messrs. Alen Keshishyan and Claudio Federico each own 20% of Appellant. (*Id.*) Mr. Jonathan Miranda owns the remaining 2.5%. (*Id.*) Mr. Kim is a veteran. (CF, Exh. 93.) The other three owners are not veterans. (CF, Exh. 92.)

As part of Appellant's application for VOSB certification, each of Appellant's owners, including Mr. Kim, represented that they do not have full access to Appellant's bank account and

cannot make deposits, payments, transfers, or withdrawals. (CF, Exhs. 70, 75, 80, and 85.) On July 22, 2024, SBA requested that Appellant address who has control over Appellant's bank account. (CF, Exh. 52.) On July 24, 2024, Appellant provided a letter of explanation. Appellant stated:

Andy Youn is the [Chief Financial Officer (CFO)] for [Appellant] and has full access to [Appellant's] current bank accounts. However, only members can designate authority for bank control. All members have given full access to the CFO.

(CF, Exh. 29 at 1.)

B. Denial

On August 5, 2024, SBA, acting through the Director of the Office of Government Contracting (D/GC), denied Appellant's application for VOSB certification. (CF, Exh. 27.) The D/GC found that the documentation Appellant provided did not demonstrate that one or more veterans controls the management and daily business operations of Appellant. (*Id.*)

The D/GC observed that each of Appellant's four owners, including Mr. Kim, stated that they do not have full access to Appellant's bank accounts and cannot make deposits, payments, transfers, or withdrawals. (*Id.*) Furthermore, in a letter to SBA, Appellant indicated that its non-veteran CFO is the only individual with access to Appellant's bank account. (*Id.*) As such, the D/GC could not determine that Mr. Kim has complete control of Appellant, since Mr. Kim apparently lacks full access to Appellant's bank account. (*Id.*)

C. Appeal

On August 6, 2024, Appellant appealed the D/GC's determination. Because the appeal appeared deficient but Appellant's deadline to file an appeal had not yet expired, OHA instructed that Appellant would have until August 19, 2024 to file a new appeal. (Order at 1.) On August 15, 2024, Appellant timely filed an amended appeal. (Appeal at 1.)

Appellant maintains that the denial decision was erroneous because Mr. Kim does, in fact, have full rights to Appellant's bank account. (*Id.*) Accompanying its appeal, Appellant offers a letter from the Bank of Hope identifying both Messrs. Kim and Youn as account signers. (Letter from K. Kang (Aug. 14, 2024).) The letter further states that Appellant's account has been open since July 15, 2024. (*Id.*)

D. Request for Clarification

On October 2, 2024, OHA issued an Order pursuant to 13 C.F.R. § 134.1112(c) requesting clarification from Appellant. In particular, OHA asked that Appellant clarify when Mr. Kim became an account signer. (Order at 1.) OHA additionally requested that Appellant explain why good cause exists to introduce the Bank of Hope letter as new evidence, and to

address why Appellant originally represented that Mr. Kim did not have access to Appellant's bank account. (*Id.*)

On October 3, 2024, Appellant responded to OHA's Order. Appellant asserts that the date of the letter from the Bank of Hope — August 14, 2024 — is the date Appellant requested that the bank confirm that Mr. Kim is an authorized signer of the bank account. (Response to Order at 2.) Mr. Kim, however, has had full signing rights to this bank account since it was opened on July 15, 2024. (*Id.*)

Appellant further maintains that, when it began applying for VOSB certification, Appellant was in the process of switching banks. (*Id.*) Mr. Kim had designated Mr. Youn as the only signer of the prior account since Appellant was not yet earning sufficient revenue. (*Id.*) In opening its new Bank of Hope account, however, Appellant included Mr. Kim as an account signer. (*Id.*) Appellant claims that it attempted to explain this situation to an SBA representative during the application process, but SBA did not instruct Appellant to submit further documentation on this point. (*Id.*)

III. Discussion

A. Standard of Review

When a concern seeks certification as a VOSB, SBA regulations provide that:

An Applicant's eligibility will be based on the totality of circumstances, including facts set forth in the application, supporting documentation, any information received in response to any SBA request for clarification, any independent research conducted by SBA, and any changed circumstances. The Applicant bears the burden of proof to demonstrate its eligibility as a VOSB or SDVOSB.

13 C.F.R. § 128.302(d). On appeal to OHA, Appellant has the burden of proving, by a preponderance of the evidence, that the denial decision is based upon clear error of fact or law. 13 C.F.R. § 134.1111.

B. Analysis

Appellant has established that the D/GC's denial decision was based on a mistaken factual premise. As a result, this appeal must be granted.

The D/GC denied Appellant's application upon determining that Mr. Kim, Appellant's veteran majority owner, does not fully control Appellant since he lacks access to Appellant's bank account. Section II.B, *supra*. On appeal, however, Appellant reasonably explains that the factual record before the D/GC was incomplete, because Appellant was at that time in the process of transitioning between banks. Sections II.C and II.D, *supra*. In particular, and as confirmed by the Case File and the Bank of Hope letter, Appellant opened a new bank account shortly after it informed SBA that only Mr. Youn had access to the prior bank account. Sections II.A and II.D, *supra*. Appellant further clarifies that Mr. Kim always has had full signing rights

to the new bank account since that account was opened in July 2024. Sections II.C and II.D, *supra*. As such, the question whether Mr. Kim is authorized to access Appellant's bank account underwent a material change in July 2024, prior to issuance of the D/GC's decision on August 5, 2024. Appellant additionally attests that it attempted to notify SBA of these circumstances, but this information apparently was not communicated to the D/GC. *Id.* Appellant thus has persuasively shown that Mr. Kim, a veteran, does have full access to Appellant's bank account. Because the D/GC expressed no other concerns with Appellant's application, Appellant is an eligible VOSB.

IV. Conclusion

Appellant has established that the D/GC relied on a mistaken factual premise in denying Appellant's application for VOSB certification. The appeal therefore is GRANTED. The D/GC must immediately include Appellant in the SBA certification database. 13 C.F.R. § 134.1112(f). This is the final agency action of the U.S. Small Business Administration. 15 U.S.C. § 657f(f)(6)(A); 13 C.F.R. § 134.1112(d).

KENNETH M. HYDE
Administrative Judge