

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

VSBC Appeal of:

A2B Medical, LLC,

Appellant

SBA No. VSBC-406-A

Decided: October 22, 2024

APPEARANCE

Royce D. Wilkins, Member, A2B Medical, LLC, Temecula, California.

DECISION

I. Introduction and Jurisdiction

On August 8, 2024, A2B Medical, LLC (Appellant) appealed a decision of the U.S. Small Business Administration (SBA), denying Appellant's application for certification as a Service-Disabled Veteran-Owned Small Business (SDVOSB). SBA found that Appellant did not demonstrate that one or more service-disabled veterans fully controls Appellant. On appeal, Appellant maintains that the denial decision was erroneous, and requests that SBA's Office of Hearings and Appeals (OHA) reverse. For the reasons discussed *infra*, the appeal is denied.

OHA adjudicates SDVOSB 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 2, 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), Exhs. 36-37.) In June 2024, Appellant applied for certification as an SDVOSB and submitted various supporting documents to SBA. (CF, Exhs. 25-27.) Appellant is 55% owned by Mr. Royce D. Wilkins, a service-disabled veteran, and 45% owned by a non-veteran, Mr. RyeZeir A. Wilkins. (CF, Exhs. 15-16.)

Appellant provided a copy of its current Operating Agreement, dated June 3, 2024. (CF, Exh. 35.) The Operating Agreement reflects that Royce Wilkins and RyeZeir Wilkins are Appellant's two Members. (*Id.* at 1 and Exh. A.) According to the Operating Agreement, Appellant “shall issue Class A Voting Capital (‘Voting Capital’) to the Voting Members (the

‘Voting Members’).” (*Id.* at 1.) The Operating Agreement does not identify which Members are “Voting Members” or explain how much “Voting Capital” each Voting Member holds.

The Operating Agreement contains the following provisions pertinent to this appeal:

Section 2.5 Voting. Except as otherwise provided or permitted by this Agreement, Voting Members shall in all cases, in their capacity as Members or Managers of the Company, act collectively, and, unless otherwise specified or permitted by this Agreement, unanimously. Except as otherwise provided or permitted by this Agreement, no Voting Member acting individually, in his capacity as a Member or Manager of the Company, shall have any power or authority to sign for, bind or act on behalf of the Company in any way, to pledge the Company's credit, or to render the Company liable for any purpose.

...

4.5 Quorum. Members holding at least 67% of the Voting Capital in the Company represented in person, by telephonic participation, or by proxy, shall constitute a quorum at any meeting of Voting Members. In the absence of a quorum at any such meeting, a majority of the Voting Members so represented may adjourn the meeting from time to time for a period not to exceed 60 days without further notice. However, if the adjournment is more than 60 days or if after the adjournment a new record date is fixed for another meeting, a notice of the adjourned meeting shall be given to each Voting Member. The Voting Members present at a duly organized meeting may continue to transact business only as previously provided on the agenda until adjournment, notwithstanding the withdrawal during such meeting of that number of Voting Members whose absence would cause less than a quorum.

4.6 Voting. If a quorum is present, a unanimous vote of the Voting Members so represented shall be the act of the Members or Managers, unless the vote of a lesser proportion or number is otherwise required by [California law] or by this Agreement.

...

6.1 Resignation of Membership and Return of Capital. For a period of one (1) year after the Articles of Organization for the Company are filed (“the filing”), no Member may voluntarily resign his membership in the Company, and no Member shall be entitled to any return of capital from the company, except upon the written consent of all of the other Voting Members. During the second year after the filing, a Member may voluntarily resign his membership, but such Member shall be entitled to receive from the Company only the book value of his Ownership Interest, adjusted for profits and losses to the date of resignation, unless otherwise agreed by written consent of all of the other Voting Members.

(*Id.* at 2, 5-6.)

B. Denial

On July 25, 2024, SBA informed Appellant that its Operating Agreement appeared deficient. (CF, Exh. 46.) In particular, sections 2.5, 4.5, 4.6, and 6.1 of the Operating Agreement require the unanimous agreement of Appellant's Voting Members, and one of Appellant's two Members is not a service-disabled veteran. (*Id.*) SBA stated that “[y]ou may be able to overcome these issues by amending your Operating Agreement,” and recommended that Appellant should submit a response by August 1, 2024 “to avoid any further delays in processing”. (*Id.*, emphasis in original.) Appellant did not respond to SBA's correspondence.

On August 2, 2024, SBA, acting through the Director of the Office of Government Contracting (D/GC), denied Appellant's application for certification as an SDVOSB. (CF, Exh. 34.) The D/GC found that, although Royce Wilkins is a service-disabled veteran, Appellant did not establish he fully controls Appellant. (*Id.* at 2.) The D/GC continued:

Section 2.5 of the Operating Agreement requires unanimous agreement for most decisions. **Section 4.5** states 67% of voting capital [is needed] to form a quorum at a member meeting; Exhibit A indicates [Royce Wilkins] has 55% interest in [Appellant], but does not indicate how much voting capital any member owns. **Section 4.6** requires a unanimous vote of members to take action. **Section 6.1** requires unanimous agreement to make certain decisions regarding resignation of a member, including decisions about valuation of member interest. Each of these provisions allows non-Veteran control of decisions not in the exceptions in 13 CFR § 128.23(j).

(*Id.*) The D/GC added that “[Appellant] was given the opportunity to resolve these issues, but did not.” (*Id.*)

C. Appeal

On August 8, 2024, Appellant appealed the D/GC's decision to OHA. Appellant states that Royce Wilkins controls Appellant because he is the majority owner. (Appeal at 1.) Royce Wilkins also makes all administrative and operational decisions for the company, thereby exercising full authority and control. Appellant reasons:

As the president of and owning 55% of [Appellant], [Royce Wilkins] ha[s] the provision over any governing documents and the decision process of [Appellant]. [He] also provide[s] the daily administrative task[s] for [Appellant], such as routing software management for the daily services we provide and payment securement through our subcontractor programs. Decisions that are made for [Appellant] are through [him]. Insurance, asset purchases, equipment usage, software programs, and contract acquisition are all decisions that are made by [Royce Wilkins]. . . . With that being said referring to the provisions of 13 CFR § 128.203(a) [in the denial letter] is incorrect as [Appellant] is controlled and

operated by [Royce Wilkins]. Furthermore, [Royce Wilkins] [is] financing [Appellant] through [his] own funds and capital. . . .

(*Id.*)

III. Discussion

A. Standard of Review

When a concern seeks certification as a VOSB or SDVOSB, 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 clearly erroneous. 13 C.F.R. § 134.1111.

B. Analysis

I find no merit to this appeal. The record reflects that, upon review of Appellant's application, the D/GC found Appellant's Operating Agreement deficient. Sections II.A and II.B, *supra*. In particular, the Operating Agreement contains four provisions — sections 2.5, 4.5, 4.6, and 6.1 — requiring the unanimous agreement of Appellant's Voting Members, including for matters beyond the “extraordinary circumstances” permitted by 13 C.F.R. § 128.203(j). *Id.* Appellant did not explain which of its Members are “Voting Members” or how much “Voting Capital” each Voting Member holds, and one of Appellant's Members, RyeZeir Wilkins, is not a service-disabled veteran. *Id.* On these facts, then, the D/GC correctly concluded that Appellant's decision-making is not fully controlled by service-disabled veterans. Appellant's Operating Agreement also plainly does not comply with 13 C.F.R. § 128.203(f), under which one or more service-disabled veterans “must meet all supermajority voting requirements regarding the management and daily business operations of the concern”, in order for that concern to qualify as an SDVOSB. *Id.* Prior to issuing his denial decision, the D/GC informed Appellant of the defects in the Operating Agreement and offered Appellant an opportunity to address the matter, but Appellant failed to respond. Section II.B, *supra*.

On appeal, Appellant does not dispute that its Operating Agreement is deficient. Sections II.B and II.C, *supra*. Nor does Appellant attempt to demonstrate how Royce Wilkins can overcome the unanimity provisions in the Operating Agreement. *Id.* These omissions are fatal to the appeal, since the defective Operating Agreement was the central reason why Appellant's application for certification was denied. Accordingly, Appellant advanced no valid reason to

disturb the D/GC's decision. *E.g.*, *VSBC Appeal of Facekay LLC*, SBA No. VSBC-388-A (2024) (rejecting appeal when an appellant did not contest one of two major findings in the D/GC's determination).

IV. Conclusion

Appellant has not shown that the D/GC committed any error in denying Appellant's application for SDVOSB certification. The appeal therefore is DENIED. 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