

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

VSBC Appeal of:

Precision Global Supply, LLC,

Appellant

SBA No. VSBC-413-A

Decided: November 8, 2024

APPEARANCE

Jin Liu, Chairman, Precision Global Supply, LLC, Las Vegas, Nevada

DECISION

I. Introduction and Jurisdiction

On September 3, 2024,<sup>1</sup> Precision Global Supply, LLC (Appellant) appealed a decision of the U.S. Small Business Administration's (SBA) on behalf of the Director of the Veteran Small Business Certification Program (D/VSBC), denying Appellant's application for certification as a Service-Disabled Veteran-Owned Small Business (SDVOSB). The D/VSBC found that Appellant could not be certified due to issues with the Qualifying Veteran's control over the concern. On appeal, Appellant maintains that SBA's denial decision was clearly 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 27, 2024. 13 C.F.R. § 134.1104(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. The Case File

On February 13, 2024, Appellant was formed as a limited liability company (LLC) in the State of Nevada. (Case File (CF), Exh 33.) Jin Liu is the Service-Disabled Veteran, Chairman, and 51% owner of Appellant. Yanchen Lin owns 29% interest and is the Vice President, while Kit Tang owns 20% interest and is the Secretary. (CF, Exhs. 27, 31, 32, 34.)

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<sup>1</sup> The appeal was filed after the close of business on August 30, 2024. Therefore, it is counted as filed on the next business day. 13 C.F.R. § 134.204(b)(2).

On July 3, 2024, Appellant applied for certification as an SDVOSB and submitted various supporting documents to SBA. (CF, Exhs. 25 to 38.) Among these documents, Appellant submitted an Amended Operating Agreement (hereinafter Agreement) dated August 9, 2024. (CF, Exh. 27.)

### 1. Amended Operating Agreement

The Purpose of the company is to be a supplier of general office items and technical consulting services. (*Id.*, § II(a).) The Company will operate until terminated as outlines in this Agreement unless it is dissolved by the Chairman. (*Id.*, § II(c)(i).)

The Agreement identifies each Member and their respective ownership interest in the company. (*Id.*, § III(a).) Should a Member die, be declared incompetent, or withdraw from the Company by choice, the remaining Members will have the option to buy out that Member's membership interest in the Company. If approved by the Chairman, the Company may choose to allow a non-member to buy the membership interest thereby replacing the previous Member. (*Id.*, § III(d).)

Under the creation or substitution of new Members, the Agreement permits that upon approval from the Chairman, any Member may assign in whole or in part its membership interest only after granting their fellow Members the right of first refusal, as established under § III(e)(i)-(iii). (*Id.*, at 3.)

Each Member has voting power equal to their share and itemized duties to the Company. (*Id.*, § III(f)(i), (g)(i)-(xvi).)

Under § VI. Officers, it further states:

(a) Appointment and Titles of Officers. The initial officers shall be appointed by the Members and shall consist of at least a Chairman, a Secretary and a Treasurer. Any additional or substitute officers shall be chosen by the Chairman. The Members may also choose one or more President, Vice-President, Assistant Secretaries and Assistant Treasurers. Any number of offices may be held by the same person, as permitted by Nevada law. The Chairman may appoint such other officers and agents as they shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Chairman. The officers and agents of the Company shall hold office until their successors are chosen and qualified. Any officer elected or appointed by the Chairman may be removed at any time, with or without cause, by the Chairman. Any vacancy occurring in any office of the Company shall be filled by the Members. Unless the Chairman decide otherwise, if the title of an officer is one commonly used for officers of a limited liability company formed under Nevada law, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office.that (*sic*) are normally associated with that office.

(*Id.*, § VI(a), at 6.)

As an officer, the Chairman is chief executive officer of the company, presiding at all Members' meetings, and responsible for the general and active management of the company's business and see that all orders and resolutions of the Members are carried into effect. The Chairman will execute all contracts on behalf of the company, except when otherwise required by law or the Agreement, or where the execution is expressly delegated by the Members to some other officer. (*Id.*, § VI(a)(i).)

§ XII. General Provisions provide that:

(h) Amendment. This Agreement may be amended only by written consent of all the Members and approval approval (*sic*) of the Chairman. Upon obtaining the approval of any such amendment, supplement, or restatement as to the Certificate, the Company shall cause a Certificate of Amendment or Amended and Restated Certificate to be prepared, executed, and filed in accordance with Nevada law.

(*Id.*, at 10.)

#### B. Denial

On August 27, 2024, the D/VSBC denied Appellant's application finding that the documentation Appellant provided as part of the application process had not demonstrated that Mr. Liu controlled the concern. (Denial letter, at 1.) The D/VSBC concluded Appellant's Agreement failed to meet the regulatory requirement for the qualifying veteran to control a concern, “[o]ne or more qualifying veterans must meet all supermajority voting requirements regarding the management and daily business operations of the concern, regardless of the legal structure of the firm.” (*Id.*, citing 13 C.F.R. § 128.203(f).)

The D/VSBC noted that the regulation provides SBA will not find a lack of control exists where a qualifying veteran does not have unilateral authority to make decisions only in certain extraordinary circumstances, but the amendment section of the Agreement is not included among them. 13 C.F.R. § 128.203(j). Particularly, § XII(h) requires written consent of all Members to amend the Agreement. The D/VSBC concluded that because the approval of all the Members is required, the Qualifying Veteran could not meet all supermajority voting requirements.

Accordingly, the D/VSBC concluded the Qualifying Veteran did not control the concern and denied the application. (*Id.*)

#### C. Appeal

On Appeal, Appellant asserts that its Agreement was amended on August 9, 2024, to comply with 13 C.F.R. § 128.203(f) and “consistently demonstrates the supermajority control [Mr. Liu has] over all matters.” (Appeal, at 1.) Appellant also asserts that § XII(h) requires all

amendments to the Agreement be approved by the Chairman and argues that this satisfies the supermajority requirements at 13 C.F.R. § 128.203(f). (*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 based upon clear error of fact or law. 13 C.F.R. § 134.1111.

#### B. Analysis

In the instant case, Appellant has not shown that the D/VSBC committed any error of fact or law in reaching his decision. As a result, this appeal must be denied.

In order to qualify as an SDVOSB, a concern must be a small business concern at least 51% owned and controlled by one or more service-disabled veterans. 13 C.F.R. § 128.200(b). The management and daily business operations of the concern must be controlled by one or more service-disabled veterans. 13 C.F.R. § 128.203(a). The terms of a concern's governing documents (e.g., an operating agreement) determine who controls the company's decisions. *See CVE Protest of Valiant Construction, LLC*, SBA No. CVE-205-P, at 15 (2021), citing *XOtech LLC v. United States*, 950 F.3d 1376, 1380 (Fed. Cir. 2020). In instances where a non-qualifying-veteran has the ability under a concern's governing documents to prevent a quorum or otherwise block action by the qualifying veteran owners, there is negative control. 13 C.F.R. § 128.102. As noted above “One or more qualifying veterans must meet all supermajority voting requirements regarding the management and daily business operations of the concern, regardless of the legal structure of the firm.” 13 C.F.R. § 128.203(f). A requirement that a concern's governing documents be amended only by unanimous consent constitutes negative control, such that the qualifying veteran cannot be said to control the concern. *CVE Protest of First Nation Group, LLC*, SBA No. CVE-185-P, at 17 (2021).

Here, Appellant's Agreement requires unanimous consent of the Members, together with the Chairman's approval to amend the Agreement. Appellant's argument that the requirement that Mr. Liu's approval is also required to approve an amendment means the Agreement complies with the regulation is meritless. While the Chairman's approval is required for all amendments to

the Agreement, so is the unanimous consent of the Members. Section II.A, *supra*. Their unanimous consent is necessary for any amendment, and OHA has held that such a provision constitutes negative control, when the qualifying veteran cannot be held to control the concern. The regulation carves out certain extraordinary circumstances where the qualifying veteran need not have unilateral power to make decisions. These circumstances constitute protection for the interests of minority owners. However, the regulation enumerates them, and the amendment of a concern's governing documents is not among them. 13 C.F.R. § 128.203(j).<sup>2</sup>

OHA has recognized that in some circumstances, an appearance of negative control may be illusory, if a majority shareholder has the power to overcome such efforts, when for example, the service-disabled veteran, “as majority owner, can remove any directors seeking to thwart his control”. *Matter of Alpha Terra Engineering, Inc.*, SBA No. VET-238, at 2 (2013). Similarly, when an operating agreement gives the service-disabled veteran and majority owner the ability to amend the operating agreement, take action without a meeting, and remove Members with or without cause, OHA held that qualifying veteran has overcome negative control. *VSBC Appeal of Snowfensive, LLC*, SBA No. VSBC-412-A, at 6-7 (2024).

Here, unlike *Alpha Terra* and *Snowfensive*, Appellant's Chairman appears to have limited authority over its Members. Particularly, the Agreement leaves out the Chairman's ability to remove with or without cause any Members. *See e.g.*, § III(d). The Agreement states, “[t]he initial officers shall be appointed by the Members and shall consist of at least a Chairman, a Secretary and a Treasurer” without distinction that the Chairman is appointing them. “Any additional or substitute officers shall be chosen by the Chairman,” yet “[t]he Members may also choose one or more President, Vice-President, Assistant Secretaries and Assistant Treasurers.” Following this clause, “[a]ny officer elected or appointed by the Chairman may be removed at any time, with or without cause, by the Chairman.” § VI(a). This section allows the Chairman to remove with or without cause any officers the Chairman has elected or appointed, excluding those the Chairman has not elected or appointed, e.g., the initial officers who are the current Members. *Id.* While it remains unclear whether the initial officers and their employees are immune from removal by the Chairman, the unanimous consent of all the Members to make amendments creates a negative control over the Qualifying Veteran, who is unable to remove any Members seeking to thwart his control and unable to amend the Agreement on its own. § XII(h).

Therefore, I conclude that Appellant's Agreement does not grant the qualifying veteran the ability to meet the supermajority (unanimous) voting requirement for amendment of Appellant's Agreement, and therefore, Appellant is not controlled by a service-disabled veteran. The D/VSBC's decision was thus not based upon any error of fact or law.

Appellant has failed to establish clear error on the part of the D/VSBC's decision denying its application, and I must deny its appeal.

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<sup>2</sup> The enumerated circumstances are: (1) Adding a new equity stakeholder; (2) Dissolution; (3) Sale of the company or all its assets; (4) Merger; and (5) Declaring Bankruptcy. 13 C.F.R. § 128.203(j).

IV. Conclusion

Appellant has not established that the D/VSBC committed any error of fact or law in denying Appellant's application for 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).

CHRISTOPHER HOLLEMAN  
Administrative Judge