

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

VSBC Appeal of:

Black Cultural Initiative LLC,

Appellant

SBA No. VSBC-416-A

Decided: November 21, 2024

APPEARANCE

Kenyatta Guyton, CEO, Black Cultural Initiative LLC, Arlington, Texas

DECISION

I. Introduction and Jurisdiction

On August 27, 2024, Black Cultural Initiative 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 qualifying veterans. 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 denied.

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 23, 2024. 13 C.F.R. § 134.1104(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. The Case File

According to its Certificate of Formation, dated March 15, 2021, Appellant is a limited liability company (LLC) established in the state of Texas. (Case File (CF), Exh. 27.) The Certificate of Formation further describes Appellant as a manager-managed LLC with Ms. Kenyatta Guyton and Mr. Curtis L. Smith identified as Appellant's two managers. (*Id.*) Appellant's Operating Agreement, dated August 19, 2024, states that Appellant is a member-managed LLC. (CF, Exh. 25 at 1.)

In July 2024, Appellant applied for certification as a VOSB, and submitted various supporting documents to SBA. Appellant disclosed that it is 51% owned by Ms. Guyton, a

veteran. (CF, Exh. 31.) Mr. Smith owns the remaining 49% of Appellant. (CF, Exh. 32.) Mr. Smith is not a veteran. (*Id.*)

As part of its application for certification, Appellant originally submitted a Partnership Agreement, dated March 15, 2021, as its governing document. (CF, Exh. 26.) Section 5 of the Partnership Agreement, entitled “Management and Authority,” states that “[Ms.] Guyton shall have primary operational control and shall be responsible for the day-to-day management of the Partnership. [Mr.] Smith shall provide support as agreed upon by both parties.” (*Id.* at 2.) Because Appellant apparently is structured as an LLC and not as a partnership, SBA instructed that Appellant should submit an Operating Agreement in lieu of a Partnership Agreement. (CF, Exh. 38.) In response, Appellant provided an Operating Agreement, dated August 19, 2024. (CF, Exh. 25.) The Operating Agreement identifies Ms. Guyton and Mr. Smith as Appellant's two Members. (*Id.* at 1.) The Operating Agreement contains the following provisions pertinent to this appeal:

ARTICLE IV: MANAGEMENT OF THE COMPANY

1. Management: The Company shall be a member-managed LLC. The business of the Company shall be conducted by the Members.

...

ARTICLE VI: MEETINGS AND VOTING

1. Annual Meeting: The company shall hold an annual meeting of Members at a time and place determined by the Members.

2. Voting Rights: Each Member shall have voting rights proportionate to their ownership interest.

...

ARTICLE IX: AMENDMENTS

This Agreement may be amended only by the unanimous consent of the Members.

(*Id.* at 1-2.) Unlike the Partnership Agreement, the Operating Agreement contains no provision indicating that Ms. Guyton alone will manage Appellant.

B. Denial

On August 23, 2024, SBA, acting through the Director of the Office of Government Contracting (D/GC), denied Appellant's application for VOSB certification. (CF, Exh. 30.) The D/GC found that the documentation Appellant provided did not demonstrate that Ms. Guyton: (1) holds Appellant's highest officer position; (2) is able to unilaterally establish a quorum of Members or Managers without the participation of Mr. Smith, a non-veteran; and (3) has full

control over Appellant's ordinary decision-making. (*Id.* at 1.) The letter noted, but did not further explain, another reason for denial as “[t]he U.S. Department of Veterans Affairs (‘the VA’) could not confirm the veteran designation of [Ms. Guyton].”¹ (*Id.*)

The D/GC first observed that, according to Appellant's Certificate of Formation, Appellant is a manager-managed LLC with Ms. Guyton and Mr. Smith serving as Appellant's two managers. (*Id.* at 2.) Appellant's Operating Agreement, however, indicates that Appellant “shall be member managed with the business of the company conducted by the members”. (*Id.*) Furthermore, “each member shall have voting rights in proportion to their ownership interest” and the Operating Agreement “may be amended only by the unanimous consent of the members.” (*Id.*) The D/GC found that Ms. Guyton and Mr. Smith are both members and managers with the ability to control Appellant's decision-making. (*Id.*) The Operating Agreement further requires Appellant to hold an annual meeting of the members, but is silent as to how to reach a quorum for such a meeting. (*Id.*)

Due to the managers' equal voting power and the uncertainty as to whether Appellant is member-managed or manager-managed, the D/GC could not conclude that Ms. Guyton holds Appellant's highest officer position as required by 13 C.F.R. § 128.203(b). (*Id.*) Additionally, since Appellant's Operating Agreement requires an annual meeting of the members without specifying whether both members must be present, the D/GC could not determine whether Ms. Guyton could unilaterally convene a quorum without Mr. Smith's presence. (*Id.*) Lastly, based on the foregoing, the D/GC could not conclude that Appellant complies with the overall control requirement found at 13 C.F.R. § 128.203(d).

C. Appeal

On August 27, 2024, Appellant appealed the D/GC's decision. Because the appeal appeared deficient but Appellant's deadline to file an appeal had not yet expired, OHA instructed that Appellant would have until September 5, 2024, to file a new appeal. (Order at 1.) On September 3, 2024, Appellant timely filed an amended appeal.

Appellant, first, points to section 5, “Management and Authority,” of its Partnership Agreement. (Amended Appeal at 1.) Appellant interprets this provision to mean that:

The management of the Company shall be vested solely in the Manager, Kenyatta Guyton, who shall have full authority over the business operations of the Company. The Manager will make all decisions regarding the business and affairs of the Company.

¹ Applicable regulations instruct that “[a] denial or decertification based on the failure to provide sufficient evidence of the qualifying individual's status as a veteran or a service-disabled veteran is not subject to appeal to OHA.” 13 C.F.R. §§ 128.304 and 134.1103; *VSBC Appeal of Virtual Options LLC*, SBA No. VSBC-294-A (2023). When reviewing Appellant's application, however, SBA recommended overriding the lack of confirmation of Ms. Guyton's veteran status. (CF, Exh. 3.) As such, OHA will not consider this to be one of the reasons for denial.

(*Id.*) Appellant argues that this same section (1) establishes that Ms. Guyton holds Appellant's highest position; (2) “ensures that the qualifying veteran can form a quorum and make decisions independently of any non-veteran member”; and (3) enables Ms. Guyton to control the overall decision-making processes of Appellant. (*Id.* at 1-2.) Appellant denies that there is any mechanism for Mr. Smith to exercise undue influence or control over Appellant. (*Id.* at 2.)

III. Discussion

A. Standard of Review

When a concern seeks certification as an 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[.]

13 C.F.R. § 128.302(d). Furthermore, “[i]f a concern submits inconsistent information that results in SBA's inability to determine the concern's compliance with any of the VOSB or SDVOSB eligibility requirements, SBA will decline the concern's application.” *Id.* § 128.302(d)(1).

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 not carried its burden of proving clear error of fact or law in the D/GC's decision. As a result, this appeal must be denied.

The principal problem for Appellant is that Appellant submitted contradictory information to SBA as part of its application for VOSB certification. Based on the documentation provided, it was unclear whether Appellant is structured as a partnership or as an LLC, and if Appellant is an LLC, whether Appellant is member-managed or manager-managed. Section II.A, *supra*. SBA regulations make clear that, in the case of an LLC seeking VOSB certification, one or more veterans must serve as the LLC's managing members, “with control over all decisions of the [LLC].” 13 C.F.R. § 128.203(d). Here, Appellant's Certificate of Formation apparently established Appellant as a manager-managed LLC, and named both Ms. Guyton and Mr. Smith as Appellant's managers. Section II.A, *supra*. The more-recently-adopted Operating Agreement, though, instead identified Appellant as a member-managed LLC. *Id.* The Operating Agreement further indicated that “[t]he business of the Company shall be conducted by the Members,” notwithstanding that one of Appellant's two members, Mr. Smith, is not a veteran. *Id.* As such, based on the conflicting information Appellant provided, the D/GC reasonably determined that Appellant did not show that Ms. Guyton alone manages and controls Appellant. SBA regulations are clear that “[i]f a concern submits inconsistent information that

results in SBA's inability to determine the concern's compliance with any of the VOSB or SDVOSB eligibility requirements, SBA will decline the concern's application.” 13 C.F.R. § 128.302(d)(1); *see also VSBC Appeal of Horizon Mktg., Inc.*, SBA No. VSBC-296-A (2023); *VSBC Appeal of Wigs Plus, L.L.C.*, SBA No. VSBC-278-A (2023).

On appeal, Appellant points to its Partnership Agreement in an effort to overturn the D/GC's decision. Section II.C, *supra*. A partnership, though, is not the same type of business structure as an LLC. Insofar as Appellant is structured as a partnership, SBA regulations would require that “one or more qualifying veterans must serve as general partners, with control over all partnership decisions.” 13 C.F.R. § 128.203(c). Appellant does not attempt to explain how it meets these criteria. Section II.C, *supra*. Furthermore, Appellant offers no rationale why its Partnership Agreement, dated March 15, 2021, would take precedence over its Operating Agreement, dated August 19, 2024. Sections II.A and II.C, *supra*. Notably, section 5 of the Partnership Agreement, upon which Appellant bases its appeal, is omitted altogether from the Operating Agreement. *Id.* Appellant's arguments stemming from the Partnership Agreement thus fail to show error in the D/GC's decision.

IV. Conclusion

Appellant has not established that the D/GC 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).

KENNETH M. HYDE
Administrative Judge