United States Small Business Administration
Office of Hearings and Appeals

VSBC Appeal of: Blue Skye Foods, LLC, Appellant	SBA No. VSBC-442-A Decided: September 4, 2025

APPEARANCE

Joseph Patrick McConnell, Member, Blue Skye Foods, LLC

DECISION

I. Introduction and Jurisdiction

On July 17, 2025, Blue Skye Foods, 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 GRANTED.

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 filed the appeal within 10 business days after receiving the denial notice on July 15, 2025. 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 Ohio. (Case File (CF), Exh. 24.) In January of 2025, Appellant resolved to apply for certification as an SDVOSB and submitted various supporting documents to SBA. (CF, Exh. 22.) Appellant is 51% owned by Mr. Joseph Patrick McConnell, a service-disabled veteran, and 49% owned by a non-veteran, Mr. Massoud Ghaffari-Nikou. (CF, Exh. 2.)

Appellant provided a copy of its original Operating Agreement, dated January 2, 2023. (CF, Exh. 25.) On April 28, 2025, Appellant held an Organizational Meeting of Members to approve a new Operating Agreement to "ensure clear understanding of operational control" of the company and establish officer positions in accordance with the Operating Agreement. Mr.

McConnel was designated Chief Executive Officer and Treasurer, and Mr. Ghaffari-Nikou was designated Head of Sales and Marketing. (CF, Exh. 20.) The meeting approved of a new Operating Agreement. (CF, Exh. 21.)

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

20. Actions by the Members.

(a) **General**. Whenever this Agreement requires the vote, consent, approval or other action by a specified fraction or percentage "**in interest**" of some or all of the Members, such requirement shall be satisfied if such vote, consent, approval or other action is provided or authorized by Members entitled to participate in such decision who own Units which represent at least the specified fraction or percentage of the total Units owned by all Members entitled to participate in such decision. **Unless otherwise specifically provided, Joseph Patrick McConnell, the Managing Member, has discretion to make business decisions and take actions on behalf of the Company unilaterally**.

. . .

21. Management of the Company.

(a). General. The management and day-to-day operations of the Company shall be vested solely in **Joseph Patrick McConnell**, the Managing Member, who shall have exclusive authority over the daily business affairs, operations, and management decisions of the Company (including but not limited to full control over staffing, operations, supply chain management, branding, product development, marketing, and financial matters of the Company).
Notwithstanding the foregoing, certain **Major Decisions** shall require the unanimous consent of both Initial Members, as outlined in **Section 21(b)**.

(b). Major Decisions. The following decisions on behalf of the Company or any Company Subsidiary (each, a "**Major Decision**") shall require the unanimous consent of the Initial Members:

(i) Selling all or a substantial portion of Company assets, excluding normal business transactions;

(ii) Issuing a capital call for additional Member contributions;

(iii) Admitting any additional Member of the Company or any Company Subsidiary or issue any additional Membership Interests in the Company or any Company Subsidiary;

> (iv) Dissolving the Company or any Company Subsidiary or cause the Company or any Company Subsidiary to make an assignment for the benefit of creditors or any comparable filing, or to acquiesce in an involuntary bankruptcy proceeding;
>
> (v) Engaging in any business, or take any other action, which is in contradiction to any provision of this Agreement or which cause or may reasonably be expected to cause or result in a material adverse effect on the Company or any Company Subsidiary, or any property owned by the Company or any Subsidiary; and
>
> (vi) Changing the Company's or any Company Subsidiary's accounting method or tax classification, either for financial or tax reporting purposes, or any other material tax decision, election or settlement (other than those expressly granted to the Tax Representative in accordance with Section 8 of this Agreement.

(CF, Exh. at 7-9 (emphasis in original).)

B. Denial

On July 15, 2025, the D/GC declined Appellant's application because its Operating Agreement appeared deficient. The D/GC pointed out that the regulations require the Qualifying Veteran to meet all supermajority voting requirements. 13 C.F.R. § 128.203(f). The Operating Agreement gives the Qualifying Veteran control (§ 21.a.), except for certain major decisions which require unanimous consent of both members (§ 21.b.); and one of Appellant's two Members is not a service-disabled veteran. The D/GC noted that the selling of all or a substantial portion of the company's assets, membership transfer, and dissolving the company may be extraordinary circumstances; however, the changing of the company's accounting method or tax classification and the engaging of any business that contradicts the Operating Agreement are not. Since the Qualifying Veteran is unable to overcome the unanimous decision-making requirements, the D/GC concluded that Appellant was not an eligible SDVOSB.

C. Appeal

On July 17, 2025, Appellant appealed the D/GC's decision to OHA. Appellant argues:

> The tax classification of a business (LLC, S-Corp or C-Corp) is a one-time decision and is unrelated to operations of the business. Changing the tax classification can have material impact on the non-veteran's investment value and this provision was included to protect that investor, in accordance with [13 C.F.R. § 128.203(j)(7)].

Appellant further argues that the Operating Agreement contains no limitations on the operations of the business, so no changes in its operation would be in contradiction to the Operating Agreement. Also, no decision would require input from any other Member. Therefore, the Qualifying Veteran has full operational control of the business.

Appellant includes with its appeal changes made in the Operating Agreement to address the concerns in the Decline Letter.

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. Appellant's proffered *post hoc* changes to the Operating Agreement do not address the question of whether the D/GC's denial decision was in error, and thus I will not consider them here.

B. Analysis

An SDVOSB must not be less than 51% owned and controlled by one or more Service-Disabled Veteran. 13 C.F.R. § 128.200(b)(2). In the case of a Limited Liability Company such as Appellant, at least 51% of each class of member interest must be owned by one or more qualifying veterans. 13 C.F.R. § 128.202(d). 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). In the case of a limited liability company, one or more qualifying veteran must serve as managing member, with control over all decisions of the limited liability company. 13 C.F.R. § 128.203(d). One or more qualifying veteran(s) 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).

However, the regulation makes an exception to the control requirement in certain extraordinary circumstances:

SBA will not find that a lack of control exists where a qualifying veteran does not have the unilateral power and authority to make decisions regarding the following extraordinary circumstances:

> (1) Adding a new equity stakeholder or increasing the investment amount of an equity stakeholder;
>
> (2) Dissolution of the company;

(3) Sale of the company or all assets of the company;

(4) The merger of the company;

(5) Company declaring bankruptcy;

(6) Amendment of the company's corporate governance documents to remove the shareholder's authority to block any of the actions in paragraphs (j)(1) through (5) of this section; and

(7) Any other extraordinary action that is crafted solely to protect the investment of the minority shareholders, and not to impede the majority's ability to control the concern's operations or to conduct the concern's business as it chooses.

13 C.F.R. § 128.203(j).

Here Appellant's Operating Agreement explicitly vests Mr. McConnell, the Qualifying Veteran, and the Office of Managing Member with "discretion to make business decisions and take actions on behalf of the Company unilaterally" and "exclusive authority over the daily business affairs, operations, and management decisions of the Company (including but not limited to full control over staffing, operations, supply chain management, branding, product development, marketing, and financial matters of the Company)." Operating Agreement, §§ 20(a) and 21(a). This would seem to give the Qualifying Veteran control over the company.

Nevertheless, the Operating Agreement also contains a provision for certain Major Decisions, which requires unanimous approval from the Initial Members. These include selling all or a substantial portion of company assets; issuing a capital call for additional Member contributions; adding a new Member; and dissolving the Company. The D/GC found that requiring unanimous consent for these actions was permitted under 13 C.F.R. § 128.203(j)(1)-(5), which provides that SBA will not find that a lack of control exists where the Qualifying Veteran does not have the unilateral power to make decisions in certain extraordinary circumstances. Additionally, the D/GC found that decisions to engage in any business in contradiction to any provision of the Operating Agreement or change Appellant's accounting method or tax classification were not extraordinary events. Thus, requiring unanimous consent for these actions was not permitted under 13 C.F.R. § 128.203(f), which requires that the Qualifying Veteran meet all supermajority voting requirements regarding the management and daily business operations of the concern.

However, I conclude that the D/GC erred on this issue as a matter of law. Although the decision letter does not say so, the D/GC appears to believe that only those provisions explicitly identified in the regulation count as extraordinary circumstances. However, SBA has revised the regulation to include a catch-all provision. 88 Fed. Reg. 102448-9 (Dec. 17, 2024). The regulation includes as an extraordinary circumstance those actions where the Qualifying Veteran's inability to make a unilateral decision will not result in a finding of lack of control where the action is crafted solely to protect the investment of the minority shareholders, and not to impede the majority's ability to control the concern's operations or to conduct business. 13

C.F.R. § 128.203(j)(7). This section does not limit those extraordinary circumstances where the qualifying veteran need not be able to unilaterally make a decision to those enumerated in the regulation. Rather, it provides a catch-all for those provisions which protect a minority owner's interest, without impeding the majority owner's control of day-to-day business. The provision on supermajority requirements is consistent with this, as it requires the qualifying veteran to meet the supermajority requirements regarding the management and daily business operations of the concern. 13 C.F.R. § 128.203(f). Provisions crafted to protect a minority shareholder's interest do not fall into this category.

Here, the two provisions which the D/GC relied upon to find Appellant ineligible clearly fall into the category of protecting minority shareholders' interests, and not the management and daily business operations of the concern. Engaging in business that is in contradiction of the Operating Agreement, and changing the concern's accounting method or tax classification could adversely affect a minority owner's investment on the one hand, and do not affect the concerns' management and daily business operations on the other hand. These provisions clearly fall into the category of provisions permitted by 13 C.F.R. § 128.203(j)(7).

Accordingly, I find that the D/GC erred in finding Appellant ineligible.

IV. Conclusion

Appellant has shown that the D/GC committed an error in denying Appellant's application for SDVOSB 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).

CHRISTOPHER HOLLEMAN
Administrative Judge