

March 30, 2020

Reference Number 20-0029

Keliann Argy, Esq.
Chief Operating Officer
SanUVAire, LLC
6435 W. Quaker Street
Orchard Park, NY 14127

Dear Ms. Argy:

SanUVAire, LLC (SanUVAire) appeals the Niagara Frontier Transportation Authority's (NFTA) application for Disadvantaged Business Enterprise (DBE) certification under the rules of 49 CFR part 26 (the Regulation). After reviewing the entire administrative record, we affirm NFTA's decision.

The facts are uncontroverted. The majority owner of SanUVAire, Chad Sleiman, indicated on the Uniform Certification Application (UCA) that he is a "Subcontinental Asian American," which is a presumed socially and economically disadvantaged group within the meaning of sections 26.67(a) and 26.5.¹ Mr. Sleiman claimed membership in this group based on his Lebanese origins.

A DBE must be owned and controlled by at least one individual who is socially and economically disadvantaged. The Regulation states that recipients must presume that members of certain groups are disadvantaged. Section 26.67(a)(1). SanUVAire must demonstrate, by a preponderance of the

¹ 26.67(a)(1) states: "You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged."

Sections 26.5 provides that "*Socially and economically disadvantaged individual* means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control. (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it. (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged. . . .(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; (vi) Women.

evidence, that the individual upon whom the firm relies for DBE eligibility is disadvantaged. Section 26.61(b).

Section 26.5 states that “Subcontinent Asian Americans” include “persons whose origins are from India, Pakistan, Bangladesh, Bhutan, and the Maldives Islands.” The Regulation does not describe Lebanon as a country of origin for “Subcontinent Asian Americans.” Persons of Lebanese and other Middle Eastern origins are not presumed disadvantaged under the Regulation. Consequently, SanUVAire failed to carry its burden of proof with respect to group membership and social disadvantage.²

Conclusion

We affirm under section 26.89(f)(1). SanUVAire, LLC may reapply for certification once the applicable waiting period has elapsed. This decision is administratively final and not subject to petitions for reconsideration.

Sincerely,

Samuel F. Brooks
Team Lead
Disadvantaged Business Enterprise Division

cc: NFTA

² Firms owned and controlled by individuals who are not presumptively disadvantaged may be found eligible for DBE certification under section 26.67(d). SanUVAire had the burden of demonstrating eligibility based on an individual showing of social and economic disadvantage when it applied for certification, but it did not. NFTA was not required to provide additional time for the firm to make an individual showing.

Should SanUVAire reapply, we encourage you to carefully review Appendix E of the Regulation, which provides guidance regarding an individual showing of disadvantage. Under Appendix E, you must provide evidence of social and economic disadvantage that Mr. Sleiman personally experienced. The generalized claims of disadvantage that the appeal makes would not be sufficient to show eligibility.