



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 2nd day of September, 2014

Served: September 2, 2014

Application of

NORWEGIAN AIR INTERNATIONAL LIMITED

for an exemption under 49 U.S.C. § 40109 and a foreign air
carrier permit under 49 U.S.C. § 41301

Docket DOT-OST-2013-0204

ORDER DISMISSING EXEMPTION

Summary

By this order we dismiss on procedural grounds the application of Norwegian Air International Limited (NAI) for an exemption under 49 U.S.C. § 40109 for the reasons discussed below. The substantive issues involved in NAI's application for authority will be considered in the context of its request for a foreign air carrier permit under 49 U.S.C. § 41301.

Application

By application filed December 2, 2013 (as supplemented on February 13, 2014),¹ NAI, a foreign air carrier of Ireland, requests an exemption under 49 U.S.C. § 40109 and a foreign air carrier permit under 49 U.S.C. § 41301, to enable it to conduct foreign scheduled and charter air transportation of persons, property, and mail to the full extent permitted under the U.S.-EU-Norway-Iceland Air Transport Agreement of June 21, 2011, as amended (the U.S.-EU Agreement).

Responsive Pleadings

The record in this proceeding contains an extensive number of filings that were submitted over the course of several months. These include pleadings filed in response to the application of NAI, as well as additional

¹ On February 13, 2014, the applicant supplemented its original application by providing its Irish Air Operator Certificate and Operating License. Until the Department received that February submission the application remained incomplete and could not be processed. The application, as supplemented, contained the basic background information about the applicant that is required under 14 CFR Part 211 of the Department's regulations.

information that was provided by the Department for the record on two separate occasions, and subsequent pleadings filed in response to that information.²

Supporting Parties

Aside from NAI itself, the parties that filed in support of the NAI application include Federal Express Corporation (FedEx), Atlas Air, Inc. (Atlas), the Travel Technology Association (Travel Tech), the European Low Fares Airlines Association (ELFAA), the Washington Airports Task Force (WATF), the American Society of Travel Agents (ASTA), the Broward County Aviation Department and Fort Lauderdale-Hollywood International Airport, and the Greater Orlando Aviation Authority.

Objecting Parties

NAI's application is opposed by a number of U.S. and foreign air carriers, including Delta Air Lines, Inc. (Delta), United Airlines, Inc. (United), American Airlines, Inc. (American), US Airways, Inc. (US Airways), as well as Deutsche Lufthansa AG (Lufthansa) and Scandinavian Airlines System (SAS), Air France and KLM Royal Dutch Airlines (KLM), and Austrian Airlines AG (Austrian). It is also opposed by numerous U.S. labor interests, specifically the Air Line Pilots Association (ALPA), the Allied Pilots Association (APA), the Southwest Airlines Pilots' Association (SWAPA), the Transportation Trades Department AFL-CIO (TTD), the Association of Flight Attendants-CWA (AFA), the International Association of Machinists and Aerospace Workers (IAM), the Transport Workers Union of America (TWU), as well as Captain Stephen Colman, the European Cockpit Association (ECA), the European Transport Workers' Federation (ETF), the Norwegian trade union Parat, and the Signatories to the Joint Declaration Against EU-Based Flags of Convenience in Aviation as Endorsed on 5 June 2014 by the Air Crew Working Group of the Sectoral Dialogue Committee.

Other

Airlines for America (A4A) filed comments to NAI's application stating that the Department should continue to pursue questions regarding NAI's proposed U.S. operations through the Joint Committee established by the U.S.-EU Agreement.

Additional Submissions on the Record

As noted above, the record in this case includes additional information that was provided on the record on two separate occasions by the Department. Specifically, this information consists of: 1) a Department Notice served on January 30, 2014, that provided a summary of a U.S.-EU Joint Committee discussion on NAI's application; and 2) a Department Notice served on August 4, 2014, that provided a summary of a U.S.-EC Meeting of July 14, 2014, where EC officials expressed their views on the meaning and applicability of Article 17 *bis* of the U.S.-EU Agreement. Various parties to the proceeding subsequently filed additional pleadings in response to the information provided by the Department.

² In the interest of attaining a complete record in this proceeding, we grant all motions for leave to file and also accept all other late-filed pleadings.

Decision

The Department dismisses NAI's application for exemption authority. The Department typically reserves its exemption powers in awarding foreign air carrier authority to situations where the circumstances of a case are sufficiently clear-cut to permit acting, at least for a limited term, without the additional procedural protections of show-cause procedures and § 41307 review. Because of the extensive record, which reflects the novel and complex nature of this case, however, the Department does not find that a temporary exemption is appropriate or in the public interest. Accordingly, the Department is dismissing NAI's request for an exemption while it continues to process the applicant's permit application.

A tentative decision on the permit application will be issued after the Department completes its review of the record and its deliberations regarding the application.

ACCORDINGLY,

1. We dismiss the request of Norwegian Air International Limited for an exemption under 49 U.S.C. § 40109 for the services set forth in its application;
2. We grant all motions for leave to file; and
3. We will serve a copy of this order on Norwegian Air International Limited; all other parties to this proceeding; the Embassy of Ireland in Washington, D.C.; the Embassy of Norway in Washington, D.C.; the Department of State; and the Federal Aviation Administration.

By:

ANTHONY R. FOXX
SECRETARY OF TRANSPORTATION

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