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Order 2000-7-15

Served: July 14, 2000



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

Issued by the Department of Transportation  
on the 11th Day of July, 2000

Applications of

**SERVICIOS AEREOS PROFESIONALES, INC.**

for certificates to engage in interstate and foreign scheduled  
air transportation under 49 U.S.C. 41102

Dockets OST-00-6978 - 2  
and OST-00-6979 - 2

**ORDER TO SHOW CAUSE  
PROPOSING DENIAL OF APPLICATIONS  
AND CANCELLATION OF AIR TAXI AUTHORITY**

**Summary**

By this order, the Department tentatively finds that Servicios Aereos Profesionales, Inc., fails to meet U.S. citizenship requirements of 49 U.S.C. 40102(a)(15); that its applications for interstate and foreign scheduled authority under 49 U.S.C. 41102 filed in Dockets OST-00-6978 and 00-6979 should be denied; and that its existing air taxi authority issued pursuant to Part 298 should be cancelled due to lack of U.S. citizenship.

**Background**

Section 41102 of Title 49 of the United States Code (Transportation) ("the Statute") directs us to determine whether applicants for certificate authority to provide interstate and foreign scheduled air transportation are "fit, willing, and able" to perform such transportation and to comply with the Statute and the regulations of the Department. In order to be eligible to hold a certificate, we must also find that the applicant is a "citizen of the United States" as defined in the Statute.

On February 24, 2000, Servicios Aereos Profesionales, Inc. (SAP) filed applications in Dockets OST-00-6978 and 00-6979 requesting certificates pursuant to section 41102 to allow it to engage in interstate and foreign scheduled passenger operations using small aircraft primarily between points in the U.S. and points in the Caribbean.

No answers opposing SAP's applications were filed. However, as discussed below, the information before us does not demonstrate that SAP is a U.S. citizen. Indeed, it shows the

opposite. Therefore, we propose to deny the company's applications.<sup>1</sup> Further, because the U.S. citizenship requirements also apply to companies conducting operations as air taxi operators registered under 14 CFR Part 298, we propose to cancel the air taxi authority currently held by SAP.<sup>2</sup> We will, however, give interested persons an opportunity to show cause why we should not adopt as final our tentative conclusion that SAP is not a citizen of the United States and, thus, is not eligible to hold authority as a U.S. air carrier.

## CITIZENSHIP

Section 41102 requires that certificates to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section requires that the president and two-thirds of the Board of Directors and other managing officers be U.S. citizens and that at least 75 percent of the outstanding voting stock be owned by U.S. citizens. In addition to meeting these specific numerical standards, we have also interpreted the Statute to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

### Background

In its applications, SAP stated that it was a corporation registered under the laws of the Commonwealth of Puerto Rico, that its officers, directors, and key personnel were U.S. citizens, and that it was a citizen of the United States as defined in the Statute (*see* p.1). The company provided an affidavit attesting to its citizenship dated December 13, 1999, and signed by Mr. Oscar A. Patin as owner and President (*see* Exhibit 5). Information accompanying its applications demonstrated that SAP was incorporated under the laws of the Commonwealth of Puerto Rico on January 10, 1997, and that it was "authorized to issue" 1,000 shares of common stock at a value of \$200 each, for a maximum capitalization of \$200,000 (*see* item 8 of "Data Required" and Exhibit 3). The applicant stated that all of its outstanding shares were held by Mr. Oscar Patin, a U.S. citizen.<sup>3</sup>

However, other information in the application or otherwise on file with the Department raised questions as to whether SAP's President was, in fact, Oscar Patin, and, if so, whether he was actually in control of the carrier.

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<sup>1</sup> We are not, by this order, making any tentative findings with regard to the applicant's fitness. No analysis of this matter has been conducted due to the company's failure to demonstrate that it is a U.S. citizen. Should the Department ultimately conclude that SAP meets our citizenship requirements, we will proceed with a full evaluation of the company's fitness.

<sup>2</sup> SAP initially registered as an air taxi in September 1997 and holds Part 135 authority from the FAA (Certificate number X92A-927II, issued September 26, 1997). If our tentative finding that SAP is not a U.S. citizen is finalized, the company's current operations conducted under its air taxi authority will no longer be permitted.

<sup>3</sup> Exhibit 7 contained a copy of the U.S. passport held by Oscar Alexander Patin and established his U.S. citizenship.

During its approximate three years of existence as an air taxi operator, SAP has filed Part 298 registration forms (OST Form 4507) five times: once in 1997 when it received its initial authority and four times in 1999 when it made amendments adding and/or deleting aircraft. Of these submissions, the first lists "Alex Patin, General Manager" as the submitter, while the second, filed in January 1999, lists "Jose M. Patin, President" as the submitter. The remaining three filings made in 1999 list "Oscar A. Patin, President" as the submitter. However, none of these forms appear to have been signed by the individual listed. Rather, the signature on each appears to be that of Mr. Luis Irizarry, the company's consultant.

Moreover, on his resume (*see* Exhibit 7), Oscar Patin lists his current position not as President of the applicant, but as a first officer with Arrow Airlines. The only position he lists as having held with the applicant is that of Chief Pilot between February 1991 and January 1998.<sup>4</sup> Supporting documentation attached to his resume indicates, however, that between November 1991 and March 1997, Oscar Patin was employed by Servicios Aereos Profesionales, S.A. (SAP-SA), a Dominican air carrier, rather than by the applicant.

Further, on the organizational chart submitted with SAP's application no position of President is shown. Rather, the head of the organization is listed as Jose M. Patin as General Manager. Oscar Patin's positions with the applicant are shown to be Director of Safety and Director of Operations. According to the applicant, the General Manager is "responsible for the administration of the company operation" with duties that include notifying the FAA about any deviation of operations that may occur and recruiting and terminating all company personnel. The descriptions of the duties and responsibilities of both the Director of Safety and Director of Operations state explicitly that the individual holding the noted position "reports directly to the General Manager" (Jose Patin).

### **Tentative Findings**

All of the information presented thus far indicates that SAP is the alter ego and is under the control of Mr. Jose Patin and SAP-SA, a Dominican company that holds authority to conduct operations to the United States as a foreign air carrier.<sup>5</sup>

### **Voting Stock**

Taken at face value, it would appear that SAP meets the requirement of section 40102(a)(15) that at least 75 percent of its outstanding voting stock be owned by U.S. citizens. However, while the applicant states that all of its outstanding shares are held by Mr. Oscar Patin, a U.S. citizen (*see* item 9 of "Data Required"), it also states that none of its shares have as yet been issued (*see* item 8 of "Data Required"). These statements not only conflict with each other,

<sup>4</sup> It is unclear whether the February 1991 date was listed in error, since SAP was not formed until January 1997.

<sup>5</sup> *See* Exhibit 2 of Docket OST-97-3077 (Application of SAP-SA for an Exemption), November 3, 1997, which lists Jose Patin as President, his son, Jose M. Patin Eusebio, as Chief Pilot, and Isabel de Patin, his daughter in law, as General Manager.

but also with information set forth in SAP's financial statement (Exhibit 11) which lists its capital stock as \$3.0 million as of October 31, 1999, and lists its President as Jose Miguel Patin Hernandez. Not only does the financial statement indicate that the company has already issued its shares, but the total capitalization shown significantly exceeds that which is authorized for SAP: \$200,000 according to its incorporation documents. Moreover, there is no information in the application that indicates that Oscar Patin was instrumental in incorporating the applicant or that shows when he acquired the stock of the carrier or how that acquisition was financed. As noted above, Mr. Patin does not include in his resume any reference to his current position as owner and President of SAP.

Given the applicant's representation that none of SAP's stock has, in fact, been issued despite its almost three years of legal corporate existence and operation as an air taxi and these other inconsistencies, we cannot conclude the true status of the ownership represented.

### **President, Officers and Directors**

With respect to the requirement that a company's president and two-thirds of its Board of Directors and other managing officers be U.S. citizens, based on the information set forth in the application, it would also appear on its face that SAP meets two of these three requirements. Mr. Oscar Patin, who is identified as SAP's President, is a U.S. citizen. Moreover, SAP stated on page 1 of its application that "its officers, directors, and key personnel are U.S. citizens." This does not appear to be true with regard to the Board of Directors requirement.<sup>6</sup>

According to its organizational chart, SAP's management team is comprised of the following individuals:

Jose M. Patin--General Manager  
 Oscar A. Patin--Director of Safety/Director of Operations  
 Juan Javier--Chief Inspector  
 Francisco Scharron--Director of Maintenance  
 Nelson Puello--Chief Pilot

Despite SAP's statements to the contrary, one and possibly two of these individuals are not U.S. citizens. Specifically, information set forth in Exhibit 6 lists the birthplace of Mr. Jose Patin as Santo Domingo, Dominican Republic, and his status as a "U.S. resident." Other information available to us confirms that Mr. Jose Patin is a Dominican citizen.<sup>7</sup> Further, a review of the FAA records pertaining to licenses held by the applicant's key personnel indicates that Mr.

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<sup>6</sup> Because SAP's application failed to identify any members of its Board of Directors as required by our rules (14 CFR 204.2(i)), we are unable to reach a tentative conclusion with respect to that aspect of the citizenship test.

<sup>7</sup> See Exhibit 2 of SAP-SA's application for exemption in OST-97-3077, filed November 3, 1997.

Nelson Puello is also a citizen of the Dominican Republic.<sup>8</sup> If both Mr. Jose Patin and Mr. Puello are not U.S. citizens, then SAP fails to meet the two-thirds U.S. citizen management requirement of section 40102(a)(15).

### Actual Control

More importantly, however, in the context of our citizenship review is that the information supplied by SAP indicates that actual control of the applicant resides with Mr. Jose Patin, who is a non-U.S. citizen. We reach this tentative position based on a number of factors.

First, as General Manager of SAP, Jose Patin is listed as being responsible for the administration of the company's operations. Nothing in the applicant's filings indicate that either Jose Patin or the General Manager reports to any other individual. Rather, the opposite is true: the filings show that Oscar Patin, the purported owner and President of SAP, reports directly to Jose Patin.<sup>9</sup>

Second, as noted above, SAP's financial statement (*see* Exhibit 11) lists its President as Jose Miguel Patin Hernandez. Moreover, the financial information presented in the current dockets (OST-00-6978 and 00-6979) and in the filings made by SAP-SA in Docket OST-97-3077 (*see* Exhibit 1) contain strikingly similar figures, including capitalization amounts (\$3.0 million) and certain office equipment, machinery, and instrument and tools acquisition costs, that are identical on each despite the fact that they are supposedly for different companies and one statement is as of December 31, 1996, and the other is as of October 31, 1999.

Third, the address listed as SAP's primary place of business is identical to that of SAP-SA, and many of the aircraft listed on SAP's registration form (OST Form 4507) appear to be owned or leased by SAP-SA.<sup>10</sup>

In light of the foregoing, we tentatively find that Jose Patin, a non-U.S. citizen, exercises, and will continue to exercise, control over the applicant. As a result, we tentatively conclude that SAP is not a citizen of the United States as required by section 41102 of the Statute; that it, therefore, is not qualified to hold authority as a U.S. air carrier; and thus, that SAP's applications for interstate and foreign certificate authority in Dockets OST-00-6978 and 00-6979 should be denied and that its Part 298 air taxi authority should be terminated.

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<sup>8</sup> FAA records pertaining to Mr. Puello's FAA-issued Airline Transport Pilot certificate identifies his citizenship as Dominican Republic.

<sup>9</sup> *See* SAP's organizational chart and accompanying description of duties and responsibilities for each of its key personnel.

<sup>10</sup> Both companies list Herrera International Airport, Santo Domingo, Dominican Republic, as the address of their principal place of business. As set forth in Exhibit 1, SAP's aircraft identified as HI-719CT and HI-717CT are owned by SAP-SA and are registered in the Dominican Republic to that company.

## OBJECTIONS

We will give interested persons 14 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 7 days thereafter. We expect such persons to direct their objections, if any, to the applications and points at issue and to support such objections with detailed economic analyses. If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such a hearing or discovery is considered necessary, and what material issues of decisional fact the objector would expect to establish through a hearing or discovery that cannot be established in written pleadings. The objector should consider whether discovery procedures alone would be sufficient to resolve material issues of decisional fact. If so, the type of procedure should be specified (See Part 302, Rules 25 and 26); if not, the reasons why not should be explained. We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to SAP's U.S. citizenship and will deny its applications in Dockets OST-00-6978 and OST-00-6979 for interstate and foreign scheduled passenger authority, and cancel its existing Part 298 authority to conduct operations as an air taxi. If, however, SAP is able to demonstrate that it is, in fact, owned and controlled by U.S. citizens, we will reconsider our proposed actions.

### ACCORDINGLY,

1. We direct all interested persons to show cause why we should not issue an order finding that Servicios Aereos Profesionales, Inc., does not meet the U.S. citizen requirements of the Statute, and denying it the section 41102 certificate authority it seeks, and canceling its existing air taxi authority.<sup>11</sup>
2. We direct any interested persons having objections to the issuance of orders making final the proposed findings and conclusions stated above to file them with Department of Transportation Dockets, 400 Seventh Street, SW, Room PL-401, Washington, D.C. 20590, in Dockets OST-00-6978 and 00-6979, and serve them upon all persons listed in Attachment A no later than 14 days after the service date of this order; answers to objections shall be filed no later than 7 days thereafter.
3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.<sup>12</sup>

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<sup>11</sup> To allow for an orderly shut down of SAP's current air taxi operations, any action canceling the company's air taxi authority will not become effective until the 91<sup>st</sup> day after the service date of the final order in this case.

<sup>12</sup> Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter orders making final our tentative findings and conclusions.
5. We will serve a copy of this order on the persons listed in Attachment A.
6. We will publish a summary of this order in the Federal Register.

By:

**A. BRADLEY MIMS**  
Acting Assistant Secretary for  
Aviation and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:  
[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp).*

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