

149368

Order 2002-1-10



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

**SERVED: January 24, 2002**

Issued by the Department of Transportation  
on the 26th day of November, 2001

Application of

**AVIALEASING AVIATION COMPANY**

for a foreign air carrier permit under  
49 U.S.C. § 41301

Docket OST-99-6026 - 2

**ORDER ISSUING FOREIGN AIR CARRIER PERMIT**

**Summary**

This order issues a foreign air carrier permit to Avialeasing Aviation Company to engage in charter foreign air transportation of property and mail between Uzbekistan and the United States pursuant to the bilateral aviation undertakings of the United States and Uzbekistan.

**Application**

By application filed July 27, 1999, Avialeasing Aviation Company (Avialeasing) requests that we issue it an initial foreign air carrier permit to conduct all-cargo charter operations between Uzbekistan and the United States consistent with the provisions of the open-skies aviation agreement between the United States and Uzbekistan.<sup>1</sup> Avialeasing states that it has been designated by the Government of Uzbekistan to perform the proposed services; it is substantially owned and effectively controlled by citizens of Uzbekistan; and it is operationally and financially fit to perform the proposed services.

No answers were filed in response to Avialeasing's permit application.

**Decision**

We have reviewed the record in this case and have decided to grant the application using

---

<sup>1</sup> Most recently, on September 22, 2000, we renewed Avialeasing's exemption authority, for a two-year period, to engage in charter foreign air transportation of property and mail identical to the authority requested here. See Notice of Action Taken, dated September 22, 2000, Docket OST-99-6025.

simplified Subpart B procedures.<sup>2</sup> The public was informed of the application by notice in the Federal Register and the Department's published weekly list of applications filed.<sup>3</sup> The notice described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. Simplified procedures are appropriate in this case because there are no material determinative issues of fact requiring other procedures.

We find that grant of this foreign air carrier permit is in the public interest, and that Avialeasing is qualified to conduct the proposed operations.

### **Public Interest Considerations**

During February 1998, the United States and Uzbekistan concluded an open-skies bilateral aviation agreement that provides broad rights for the designated carriers of each side, including rights to conduct the all-cargo charter services proposed by Avialeasing.<sup>4</sup>

### **Operational and Financial Fitness**

We find that Avialeasing is operationally and financially fit to conduct the operations at issue here. Avialeasing was founded in 1992 and is based in Tashkent, Uzbekistan.<sup>5</sup> During 1999, Avialeasing commenced regular charter operations between Tashkent and Luxembourg in cooperation with Azerbaijan Airways transporting general cargo. On September 20, 1999, we granted Avialeasing initial Department authority to conduct all-cargo charter services between Uzbekistan and the United States, consistent with our open skies aviation agreement with Uzbekistan. We subsequently renewed that authority for a period of two years on September 22, 2000.<sup>6</sup> Avialeasing has experienced management and has had no safety violations, fatal accidents or tariff violations in the last five years. Avialeasing has been designated by its government and holds effective authority from its homeland to conduct the proposed operations. The FAA's Flight Standards Service (AFS-50) has advised us that it knows of no reason why we should act unfavorably on Avialeasing's request for a foreign air carrier permit. We have verified Avialeasing's compliance with 14 CFR Parts 203 (Warsaw liability waiver), 205 (Insurance requirements) and 129 (FAA Operations Specifications).

---

<sup>2</sup> 14 CFR 302.210 (a)(2) and 302.213.

<sup>3</sup> 64 FR 43236, August 9, 1999.

<sup>4</sup> See Air Transport Agreement between the United States and Uzbekistan, entered into force on February 27, 1998 (the Agreement).

<sup>5</sup> Avialeasing states that its aircraft will be maintained in accordance with international standards at Avialeasing's maintenance facility at Tashkent International Airport. Heavy maintenance and overhaul on its aircraft will be performed at the Tashkent Repair and Manufacturing Facility.

<sup>6</sup> See Notice of Action Taken, dated September 22, 2000, in Docket OST-99-6025.

Avialeasing has provided financial information which indicates that it can conduct the proposed services without jeopardizing shipper funds. For the year ending December 31, 1999, Avialeasing reported total assets of approximately \$1.26 million; total liabilities of \$366 thousand; and owners' equity of \$896 thousand. For the year ending December 31, 1999, Avialeasing reported an operating profit of \$13 thousand. For the year ending December 31, 2000, Avialeasing reported total assets of \$783 thousand; total liabilities of \$241 thousand; and owners' equity of \$542 thousand. For the year ending December 31, 2000, Avialeasing reported an operating profit of \$151 thousand.

### **Ownership and Control**

We find that Avialeasing is substantially owned and effectively controlled by the citizens of Uzbekistan. Specifically, Avialeasing is owned by two individuals, both citizens of Uzbekistan, and a U.S. corporation, which is owned and controlled by citizens of Uzbekistan.<sup>7</sup> All of Avialeasing's officers, directors and key management personnel are citizens of Uzbekistan.

### **Operational Conditions**

Because the Agreement provides for the operation of cargo charter flights between the United States and a third country or countries, we have determined that it is in the public interest to grant Avialeasing a waiver under 14 CFR § 212.12 from the requirements of 14 CFR § 212.9(b)(1) that it obtain our prior approval before operating Fifth Freedom cargo charters that are encompassed under the Agreement. However, Avialeasing must comply with FAA-approved flight routings for its all-cargo charter operations. To facilitate the establishment of satisfactory flight routings, we will require that Avialeasing comply with the filing requirements set forth in 14 CFR § 212.9(e).

In view of the foregoing, and all the facts of record, we find and conclude that:

1. It is in the public interest to issue Avialeasing a foreign air carrier permit in the form attached;
2. Avialeasing is fit, willing and able properly to perform the foreign air transportation described in the attached permit and to conform to the provisions of the Act, and to our rules, regulations, and requirements;
3. The public interest requires that the exercise of the privileges granted by the permit should be subject to the terms, conditions, and limitations contained in the attached

---

<sup>7</sup> Avialeasing is owned by Igor A. Smirnov (41%), Marat Byjanov (20%) and Spot Check (39%), the U.S. corporation owned and controlled by citizens of Uzbekistan.

permit, and to such other reasonable terms, conditions, and limitations required by the public interest as we may prescribe;

4. The issuance of this foreign air carrier permit will not constitute a “major regulatory action” under the Energy Policy and Conservation Act of 1975, as defined in § 313.4(a)(1) of our Regulations;<sup>8</sup> and

5. The public interest does not require an oral evidentiary hearing on the application.

**ACCORDINGLY,**

1. We issue, in the form attached, a foreign air carrier permit to Avialeasing authorizing it to engage in charter foreign air transportation of property and mail (1) between any point or points in Uzbekistan and any point or points in the United States; and (2) between any point or points in the United States and any point or points in a third country or countries;

2. The exercise of the privileges granted above is subject to Avialeasing’s compliance with the conditions listed in Attachment A;

3. We grant, (*sua sponte*), Avialeasing a waiver under 14 CFR § 212.12 from the requirement of 14 CFR § 212.9(b)(1) that Avialeasing Aviation Company obtain our prior approval before operating Fifth Freedom cargo charters that are encompassed under the Agreement;

4. We require Avialeasing to comply with FAA-approved flight routings for its all-cargo charter operations;

5. To facilitate the establishment of satisfactory flight routings required under ordering paragraph 4 above, we will require that Avialeasing comply with the filing requirements set forth in 14 CFR § 212.9(e) before performing such charter(s);

6. Copies of all applications filed in accordance with the authority granted above shall be simultaneously served on the Department of State and the Federal Aviation Administration (AIA-100);

7. To the extent not granted, we deny all requests for relief in Docket OST-99-6026;

8. Unless disapproved by the President of the United States under § 41307 of Title 49 of the

---

<sup>8</sup> This finding is based on the fact that the grant of this permit will not result in a near-term increase in fuel consumption in excess of 10 million gallons.

U.S. Code, this order and the attached permit shall become effective on the 61st day after its submission for § 41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;<sup>9</sup> and

9. We will serve a copy of this order on Avialeasing Aviation Company; the Ambassador of Uzbekistan in the United States; the Department of State (Office of Aviation Negotiations) and the Federal Aviation Administration (AIA-100 & the New York IFO).

By:

READ C. VAN DE WATER  
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)*

---

<sup>9</sup> This order was submitted for § 41307 review on November 26, 2001. On January 23, 2002, we received notification that the President's designee, under Executive Order 12597 and implementing regulations, did not intend to disapprove the Department's order.

Issued by  
Order 2002-1-10

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

-----  
**PERMIT TO FOREIGN AIR CARRIER**  
-----

**Avialeasing Aviation Company**

A Flag Carrier of Uzbekistan

is authorized, subject to the following provisions, the provisions of Title 49 of the U.S. Code and the orders, rules, and regulations of the Department of Transportation, to engage in charter foreign air transportation of property and mail as follows:

Between any point or points in Uzbekistan and any point or points in the United States.

Between any point or points in the United States and any point or points in a third country or countries.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations in both the order issuing this permit and the attachment to this order, and to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the holder's homeland are or shall become parties.

This permit shall be effective on **January 23, 2002**. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention or agreement, this permit shall terminate (1) upon the dissolution or liquidation of the holder to whom it was issued; (2) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the bilateral right for the service authorized by this permit from the service which may be operated by airlines designated by the Government of and Uzbekistan (or, if the right is partially eliminated, then the authority of this permit shall terminate in like part); (3) upon the effective date of any permit granted by the Department to any other carrier designated by the Government of Uzbekistan in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement between the United States and Uzbekistan. However,

clause (4) of this paragraph shall not apply if prior to such termination or expiration, the foreign air transportation authorized herein becomes the subject of another treaty, convention or agreement to which the United States and Uzbekistan become parties.

The Department of Transportation has executed this permit and affixed its seal on November 26, 2001.

By:

READ C. VAN DE WATER  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

**FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY**

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:

(a) based on its operations in international air transportation that, according to the contract of

carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or

(b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply (except as otherwise provided in the applicable bilateral agreement) with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).

