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Posted: 5/15/2001 2:30 p.m.

Order 2001-5-14



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

Issued by the Department of Transportation
on the 15th day of May, 2001

SERVED: MAY 15, 2001

In the Matter of the Application of

GULF & CARIBBEAN CARGO, INC.
d/b/a GULF & CARIBBEAN AIR

for grant of an exemption pursuant to 49 USC § 40109
(U.S.-Dominican Republic All-Cargo Service)

Docket OST-2000-8290 - 6

ORDER ON PETITION

Summary

By this order, we affirm the December 8, 2000, action of the Director, Office of International Aviation, dismissing the exemption application of Gulf & Caribbean Cargo, Inc. d/b/a Gulf & Caribbean Air (GCA) in Docket OST-2000-8290.

Background

On November 13, 2000, GCA filed an application for an exemption to authorize GCA to engage in scheduled all-cargo air transportation between points in the United States and points in the Dominican Republic using small aircraft. In support of its application GCA noted that it holds certificates of public convenience and necessity for domestic and foreign all-cargo services, that it operates two Convair CV-580 freighter aircraft, and that it is engaged exclusively in the performance of cargo charter services in the Caribbean region, primarily between points in Puerto Rico and the Dominican Republic.¹ GCA stated that it planned to expand its operations to include scheduled service between Ft. Lauderdale and/or Miami, Florida, and Aguadilla and/or San Juan, Puerto Rico, on the one hand, and Santo Domingo, Santiago and/or Puerto Plata, Dominican Republic, on the other, with its CV-580 aircraft, thus the reason for its exemption request.

¹ See Order 98-12-15, issuing certificates of public convenience and necessity for domestic and foreign services, both of which are limited to small aircraft operations for all-cargo services at this time. The foreign certificate authorizes service between the terminal points Indianapolis, Indiana, and Fort Lauderdale, Florida, on the one hand, and the terminal point Port au Prince, Haiti, on the other.

By letter dated December 8, 2000, the Director, Office of International Aviation, dismissed the requested exemption application on the basis that GCA already holds all the necessary regulatory authority it needed to operate the proposed Dominican Republic all-cargo services with small aircraft. Specifically, the Director noted that section 206.5 of the Department's regulations grants blanket exemption authority to carriers, such as GCA, that hold certificates of public convenience and necessity under 49 USC §41102, to operate services with small aircraft (aircraft with a maximum payload of fewer than 18,000 pounds) without further Department authorization. The Director further stated that, should GCA develop firm plans to operate service with large aircraft that would require additional Department authority, the carrier could apply for such authority at that time.

Petition for Reconsideration

On December 18, 2000, GCA filed a petition for reconsideration of the Department's dismissal.² GCA submits that it has encountered difficulty in obtaining necessary landing rights permits by the Dominican Department of Civil Aeronautics (DCA) and has been advised that it will continue to experience difficulties as long as the carrier does not hold specific route authority to serve the Dominican Republic. It further states that the DCA accords lower priority to the processing and granting of landing rights permits to foreign air taxi operators and other carriers lacking specific route authority issued by the carrier's homeland government. GCA maintains that although it does not need specific exemption or certificate authority to provide the proposed scheduled all-cargo service, it needs specific authority as a precondition to its ability to obtain requisite landing rights on a timely and certain basis.

We received no answers to the petition.

Decision

We have decided to grant the petition, and on review to affirm the dismissal of the exemption application in Docket OST-2000-8290. As noted in the staff's decision, GCA already holds the economic authority needed from the U.S. government to conduct the operations it proposes and, thus, additional authority from the Department is not necessary.

However, due to the concerns raised by GCA in its petition, the Department made inquiries to Dominican Republic aviation officials through diplomatic channels concerning the Dominican Republic government's processing of U.S. carrier landing rights applications. In response to those inquiries, the Assistant Director at the Dominican Republic Directorate General of Civil Aviation (DGCA) specifically advised that the DGCA does not apply greater priority or different procedures for processing landing rights applications from carriers with specific route authority

² Although GCA styled its request as a petition for reconsideration, which might imply a further decision at the staff level, we have elected, in the interest of finality, to treat its request as a petition for review of staff action for decision at the Deputy Assistant Secretary level. Furthermore, we will not entertain petitions for reconsideration of the present decision.

than for carriers with blanket exemption authority. In these circumstances, we find that the Director, Office of International Aviation, properly dismissed GCA's application. We note that the DGCA also provided specific filing requirements for landing rights permits to facilitate the Dominican government's processing of such requests, which we will communicate to GCA. Should the carrier experience difficulties in obtaining timely landing permits, we will pursue the matter with the Dominican government.

ACCORDINGLY,

1. We grant the petition of Gulf & Caribbean Cargo, Inc.; and upon review, affirm the December 8, 2000 action of the Director, Office of International Aviation, dismissing the exemption application in Docket 2000-8290;
2. We will not entertain petitions for reconsideration of this order; and
3. We will serve this order on Gulf & Caribbean Cargo, Inc., the Ambassador of the Dominican Republic, and the U.S. Department of State (Office of Aviation Negotiations).

By:

SUSAN MCDERMOTT
Deputy Assistant Secretary for
Aviation and International Affairs

(SEAL)

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