

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

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Mahan Airways)
Mahan Tower)
No. 21, Azadegan St.)
M.A. Jenah Exp. Way)
Tehran, Iran)
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Respondent.)
)

ORDER RENEWING ORDER TEMPORARILY DENYING EXPORT PRIVILEGES

Pursuant to Section 766.24 of the Export Administration Regulations, 15 C.F.R. Parts 730-774 (2009) (“EAR” or the “Regulations”), I hereby grant the request of the Bureau of Industry and Security (“BIS”) to renew for 180 days the Order Temporarily Denying the Export Privileges of Respondent Mahan Airways (“TDO”), as I find that renewal of the TDO is necessary in the public interest to prevent an imminent violation of the EAR.

I. Procedural History

On March 17, 2008, Darryl W. Jackson, the then-Assistant Secretary of Commerce for Export Enforcement (“Assistant Secretary”), signed a TDO denying Mahan Airways’ export privileges for a period of 180 days on the grounds that its issuance was necessary in the public interest to prevent an imminent violation of the Regulations. The TDO also named as denied persons Balli Group PLC, Balli Aviation, Balli Holdings, Vahid Alaghband, Hassan Alaghband, Blue Sky One Ltd., Blue Sky Two Ltd., Blue Sky Three Ltd., Blue Sky Four Ltd., Blue Sky Five Ltd., and Blue Sky Six Ltd. (all of the United Kingdom and hereinafter collectively referred to as the “Balli Group Respondents”), as well as Blue Airways (of Yerevan, Armenia). The TDO was issued

ex parte pursuant to Section 766.24(a), and went into effect on March 21, 2008, the date it was published in the *Federal Register*. On July 18, 2008, in accordance with Section 766.23 of the Regulations, Assistant Secretary Jackson issued an Order adding Blue Airways FZE and Blue Airways, both of Dubai, United Arab Emirates (“the UAE”), to the TDO as persons related to Blue Airways of Armenia (along with Blue Airways FZE and Blue Airways of the UAE, hereinafter collectively referred to as the Blue Airways Respondents).¹ On September 17, 2008, Assistant Secretary Jackson renewed the TDO for an additional 180 days in accordance with Section 766.24 of the Regulations, via an order effective upon issuance, and on March 16, 2009, the TDO was similarly renewed by then-Acting Assistant Secretary Kevin Delli-Colli.² On September 11, 2009,³ Acting Assistant Secretary Delli-Colli renewed the TDO for an additional 180 days against Mahan Airways. The TDO was not renewed against the Balli Group Respondents or the Blue Airways Respondents.

On February 17, 2010, BIS, through its Office of Export Enforcement (“OEE”), filed a written request for renewal of the TDO against Mahan Airways for an additional 180 days, and served a copy of its request on the Respondent in accordance with Section 766.5 of the Regulations. No opposition to renewal of the TDO has been received from Mahan Airways.

¹ The Related Persons Order was published in the Federal Register on July 24, 2008.

² The September 17, 2008 Renewal Order was published in the Federal Register on October 1, 2008. The March 16, 2009 Renewal Order was published in the Federal Register on March 25, 2009.

³ The September 11, 2009 Renewal Order was published in the Federal Register on September 18, 2009.

II. Discussion

A. Legal Standard

Pursuant to Section 766.24(d)(3) of the EAR, the sole issue to be considered in determining whether to continue a TDO is whether the TDO should be renewed to prevent an “imminent” violation of the EAR as defined in Section 766.24. “A violation may be ‘imminent’ either in time or in degree of likelihood.” 15 C.F.R. 766.24(b)(3). BIS may show “either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.” *Id.* As to the likelihood of future violations, BIS may show that “the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical and negligent [.]” *Id.* A “lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.” *Id.*

B. The TDO and BIS’s Request for Renewal

OEE’s request for renewal is based upon the facts underlying the issuance of the initial TDO and TDO renewals in this matter and the evidence developed over the course of this investigation indicating Mahan Airways’ clear willingness to continue to disregard U.S. export controls and the TDO. The initial TDO was issued as a result of evidence that showed that Mahan Airways and other parties engaged in conduct prohibited by the EAR by knowingly re-exporting to Iran three U.S.-origin aircraft, specifically Boeing 747s (“Aircraft 1-3”), items subject to the EAR and classified under Export Control Classification Number (“ECCN”) 9A991.b, without the required U.S. Government authorization. Further evidence submitted by BIS indicated that Mahan Airways

was involved in the attempted re-export of three additional U.S.-origin Boeing 747s (“Aircraft 4-6”) to Iran.

As more fully discussed in the September 17, 2008 TDO Renewal Order, evidence presented by BIS indicated that Aircraft 1-3 continued to be flown on Mahan Airways’ routes after issuance of the TDO, in violation of the Regulations and the TDO itself.⁴ It also showed that Aircraft 1-3 had been flown in further violation of the Regulations and the TDO on the routes of Iran Air, an Iranian Government airline. In addition, as more fully discussed in the March 16, 2009 Renewal Order, in October 2008, Mahan Airways caused Aircraft 1-3 to be deregistered from the Armenian civil aircraft registry and subsequently registered the aircraft in Iran. The aircraft were relocated to Iran and were issued Iranian tail numbers, including EP-MNA and EP-MNB, and continued to be operated on Mahan Airways’ routes in violation of the Regulations and the TDO.

Moreover, as discussed in the September 11, 2009 Renewal Order, Mahan Airways continued to operate Aircraft 1-3 in violation of the Regulations and the TDO, and also committed an additional knowing and willful violation of the Regulations and the TDO when it negotiated for and acquired an additional U.S.- Origin aircraft. The additional aircraft was an MD-82 aircraft, which was subsequently painted in Mahan Airways livery and flown on multiple Mahan Airways’ routes under tail number TC-TUA.

OEE seeks renewal of the TDO against Mahan Airways based on its participation in the violations discussed in the initial and renewed TDOs and Mahan Airways’ continued defiance of the Regulations and the TDO by operating at least two of Aircraft 1-3 on its routes in and out of Iran since the September 11, 2009 Renewal Order, and the third of those aircraft during part of that time

⁴ Engaging in conduct prohibited by a denial order violates the Regulations. 15 C.F.R. §§ 764.2(a) and (k).

period.⁵ OEE also notes that in addition to Mahan Airway's on-going violations of the Regulations and TDO, a United Kingdom court found Mahan Airways in contempt of court on February 1, 2010, for failing to comply with that court's December 21, 2009 and January 12, 2010 orders compelling Mahan Airways to remove the Boeing 747s from Iran and ground them in the Netherlands. See Exhibit 3 to OEE's Renewal Request. Mahan Airways and the Balli Group Respondents have been litigating before the U.K. court concerning ownership and control of Aircraft 1-3. OEE's submission also includes a copy of a letter from Mahan Airways' Chairman to the U.K. court dated January 12, 2010, in which Mahan Airways indicates, inter alia, that it opposes U.S. Government actions against Iran, that it was continuing to operate the aircraft on its routes in and out of Tehran (and had 158,000 "forward bookings" for these aircraft), and that it wished to continue to do so and would pay damages if required by that court, rather than ground the aircraft. See Exhibit 4 to OEE's Renewal Request.

C. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the record here, I find that violations of the Regulations have occurred and continue to occur involving the unlicensed re-export of U.S.-origin Boeing 747s presently under Mahan Airways' possession and control. The aircraft are currently located in Iran and are registered and/or operated by Mahan Airways in violation of the Regulations and the most recent Renewal Order dated September 11, 2009. Mahan Airways' continued course of conduct illustrates its refusal to

⁵ The third Boeing 747 appears to have undergone significant service maintenance and was not in flight operation during part of the renewal period.

comply with the TDO or U.S. export control laws.⁶

I find that the evidence presented by BIS convincingly demonstrates that Mahan Airways has repeatedly violated the EAR and the TDO and that such knowing violations have been significant, deliberate and covert, and that there is a likelihood of future violations. As such, a TDO is needed to give notice to persons and companies in the United States and abroad that they should continue to cease dealing with Mahan Airways in export transactions involving items subject to the EAR. Such a TDO is consistent with the public interest to prevent imminent violation of the EAR.

Accordingly, I find pursuant to Section 766.24, that renewal of the TDO for 180 days against Mahan Airways is necessary in the public interest to prevent an imminent violation of the EAR.

III. ORDER

IT IS THEREFORE ORDERED:

FIRST, that the Respondent, MAHAN AIRWAYS, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp.Way, Tehran, Iran (the "Denied Person") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Export Administration Regulations ("EAR"), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

⁶ My findings are made pursuant to Section 766.24 and the Regulations, and are not based on the contempt finding against Mahan Airways in the U.K. litigation, which I understand is still ongoing. I note, however, that Mahan Airways' statements and actions in that litigation are consistent with my findings here.

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

SECOND, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied

Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

THIRD, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

FOURTH, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondent may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. The Respondent may oppose a request to renew this Order by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on the Respondent and shall be published in the Federal Register.

This Order is effective immediately and shall remain in effect for 180 days.

A handwritten signature in blue ink, appearing to read 'David W. Mills', is written over a horizontal line.

DAVID W. MILLS
Assistant Secretary of Commerce
for Export Enforcement

Issued this 9 day of March 2010.