

Order 99-10-18
Served October 22, 1999



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

Issued by the Department of Transportation
on the 9th day of September, 1999

Application of

**DAYSTAR AIRWAYS, LTD.
D/B/A NEVIS EXPRESS**

Docket OST-99-5062

for a certificate of public convenience and necessity
under 49 U.S.C. 41102 to engage in foreign scheduled
air transportation of persons, property, and mail

FINAL ORDER

By Order 99-8-16, issued August 19, 1999, we directed all interested persons to show cause why we should not make final our tentative findings and conclusions stated in it and award a certificate of public convenience and necessity to Daystar Airways, Ltd. d/b/a Nevis Express authorizing it to engage in foreign scheduled air transportation of persons, property, and mail, using aircraft with no more than nine passenger seats. Interested persons were given 14 days to file objections to the order.

No objections to the show-cause order were received.

ACCORDINGLY,

1. We find that Daystar Airways, Ltd. d/b/a Nevis Express is fit, willing, and able to engage in foreign scheduled air transportation of persons, property, and mail, using aircraft with no more than nine passenger seats.
2. We issue a certificate of public convenience and necessity to Daystar Airways, Ltd. d/b/a Nevis Express to engage in foreign scheduled air transportation of persons, property, and mail between the United States and the islands of Nevis and St. Kitts, West Indies, in the form and subject to the Terms, Conditions, and Limitations attached.

3. Unless disapproved by the President of the United States under 49 U.S.C. 41307, this order shall become effective on the 61st day after its submission for section 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.¹
4. We direct Daystar Airways, Ltd. d/b/a Nevis Express to submit to the Air Carrier Fitness Division a first year progress report within 45 days following the end of its first year of actual flight operations.²
5. We will serve a copy of this order on the persons listed in Attachment A.

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*

¹ This order was submitted for section 41307 review on September 9, 1999. On October 20, 1999, we received notification that the President's designee under Executive Order 12597 and its implementing regulations did not intend to disapprove the Department's order.

² The report shall include a description of the carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how these operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements, and a listing of current senior management and key technical personnel.



**Certificate of Public Convenience and Necessity
for
Foreign Air Transportation
Route**

This Certifies That

**DAYSTAR AIRWAYS, LTD.
D/B/A NEVIS EXPRESS**

is authorized, subject to the provisions of Subtitle VII of Title 49 of the United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of persons, property, and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

Secretary

By Direction of the

**Issued by Order 99-10-18
On September 9, 1999
for
Effective on (see attached)
International Affairs**

**A. Bradley Mims
Acting Assistant Secretary
Aviation and**

Issued by
Order 99-10-18
Attachment



Terms, Conditions, and Limitations

**DAYSTAR AIRWAYS, LTD.
D/B/A NEVIS EXPRESS**

is authorized to engage in foreign air transportation of persons, property, and mail:

Between the United States and the islands of Nevis and St. Kitts, West Indies

This authority is subject to the following provisions:

(1) The authority to operate under this certificate will not become effective until six (business) days after the Department has received the following documents; provided, however, that the Department may stay the effectiveness of this authority at any time prior to that date:

(a) A copy of the holder's Air Carrier Certificate and Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).

(b) A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft.

(c) A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since the date of the Show Cause Order in this case.

(d) A revised list of pre-operating expenses already paid and those remaining to be paid, as well as independent verification that the holder has available to it funds sufficient to cover any remaining pre-operating expenses and to provide a working capital reserve equal to the

operating costs that would be incurred in three months of operations.

(2) Pending receipt of effective authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card), or issue tickets for the operations proposed under this certificate, and any advertisement by the holder must prominently state: "This service is subject to receipt of government operating authority."

(3) The holder may not operate aircraft designed to have a maximum passenger capacity of more than nine seats. In the event that the holder wishes to institute operations with aircraft having a larger capacity, it must first be determined fit for such operations.

(4) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.

(5) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any order of the Department of Transportation issued under them. To the extent that the holder has authority to serve more than one country or points in more than one country on the same route segment, that authority does not confer upon the holder any additional rights (including fifth-freedom intermediate and/or beyond rights) in limited-entry markets unless the holder has been specifically designated to conduct such service, and the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights. In such cases, the fact that the carrier may hold authority to serve the countries (points) at issue on the same segment will not be considered as providing any preference to the holder in a carrier selection proceeding.

(6) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.

(7) The holder's authority is effective only to the extent that such operations are also authorized by the FAA.

(8) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

(9) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.

(10) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(11) In the event that the holder does not commence actual flying operations under this certificate within one year of the date of the Department's determination of its fitness, its authority shall be revoked for dormancy, unless the holder is conducting operations under another type of certificate authority. Further, in the event that the holder commences operations for which it was found "fit, willing, and able" and subsequently ceases all such operations, its authority under all certificates held shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.