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Order 2001-8-18

Served: August 22, 2001



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

Issued by the Department of Transportation
on the 21st day of August, 2001

Applications of

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

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

Dockets OST-01-9589 - 8
OST-01-9590 - 8

Application of

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

for an exemption under 49 U.S.C. 40109 to
engage in interstate and foreign charter
passenger air transportation

Docket OST-01-9358 - 8

FINAL ORDER AMENDING CERTIFICATE AUTHORITY

Summary

By this order, we find that Gulf & Caribbean Cargo, Inc. d/b/a Gulf & Caribbean Air (G&CA), a certificated all-cargo air carrier, continues to be fit, willing, and able and should be authorized to provide interstate and foreign charter passenger air transportation using small (60-seat or less) aircraft. We also dismiss its application for an exemption to conduct these operations as moot.

Background

Section 41102 of Title 49 of the United States Code (Transportation) (the "Statute") directs us to determine whether applicants for certificate authority are fit, willing, and able to perform such transportation and to comply with the Statute and the Department's regulations. Under section 41110(e) of the Statute, carriers already holding certificate authority must remain fit in order to retain that authority. In making

fitness findings, we use a three-part test: (1) whether the company will have the managerial skills and technical ability to conduct the proposed operations, (2) whether it will have access to financial resources sufficient to conduct operations without posing an undue risk to consumers, and (3) whether it will have the disposition to comply with the Statute and regulations imposed by Federal and State agencies. We must also find that the company is a U.S. citizen.

G&CA holds certificates to engage in interstate and foreign scheduled passenger service, but is currently limited to operations with small aircraft in all-cargo service only.¹

On April 5, 2001, G&CA filed an application in Docket OST-01-9358 for an exemption pursuant to section 40109 of the Statute to engage in interstate and foreign charter air transportation of persons, property and mail. After review of the application, we informed G&CA that, because of the condition in its certificates limiting it to all-cargo operations, the more appropriate means for seeking passenger authority was through an amendment of its certificates or issuance of new certificate authority after a redetermination of its fitness to conduct such operations.

On April 30 2001, G&CA filed applications in Dockets OST-01-9589 and OST-01-9590 for certificates to provide interstate and foreign charter passenger air transportation under section 41102. G&CA accompanied its applications with the fitness information required by section 204.3 of our rules.² No answers to G&CA's applications were received.

After review of the updated fitness information that G&CA has filed, we have decided to authorize G&CA to conduct its proposed passenger service, and that show cause procedures are not necessary. G&CA was previously found fit for scheduled passenger operations, although it has never had that authority made effective. Moreover, the carrier proposes to conduct its passenger operations, at least initially, using the same type of small aircraft that it currently uses in its all-cargo operations. These are operations that could be conducted under the provisions of Part 298 of our rules by an on-demand air taxi operator without the need for a certificate or fitness finding.

1 When G&CA was found fit originally, it was issued authority to conduct interstate and foreign scheduled passenger service, the latter between Indianapolis and Fort Lauderdale, on the one hand, and Port au Prince, Haiti, on the other. The carrier planned to operate that service using DC-9 aircraft. (*See* Orders 96-12-27 and 97-1-9) However, when G&CA provided us with the necessary documents to make its authority effective, it had changed its plans, deciding to operate all-cargo service with small aircraft (*i.e.*, under 18,000 pounds payload) only. Thus, when we made its certificates effective, we limited G&CA to the operation of such service; the effectiveness of the remainder of its authority (*i.e.*, passenger and/or large aircraft operations) was conditioned upon its providing evidence of such authority from the Federal Aviation Administration, evidence of appropriate insurance coverage, and updated information establishing its fitness to operate the additional service. (*See* Order 98-12-15)

2 G&CA supplemented its applications on July 11 and August 6, 2001.

However, G&CA has specifically asked for certificate authority “in order to facilitate its future transition to larger aircraft more quickly...”³

As more fully discussed below, we conclude that G&CA continues to be a U.S. citizen and is fit, willing, and able to operate charter passenger service using small aircraft. However, in lieu of issuing the carrier new certificates to engage in interstate and foreign passenger charter service, upon receipt of evidence of appropriate FAA authority and passenger liability insurance coverage, we will reissue its existing certificates to reflect the effectiveness of the authority to conduct such operations. However, because G&CA has not presented a specific plan to operate large aircraft we will continue to restrict its operations, both passenger and cargo, to the use of small aircraft. In light of our action here, we will also dismiss as moot the exemption application in Docket OST-01-9358.

FITNESS

The Company

G&CA is headquartered in Ft. Lauderdale, Florida. Ninety-five percent of the issued and outstanding voting stock of the carrier is held by Frederick Lee Page Mason and his wife, Barbara Mason, both of whom are U.S. citizens. The remaining five percent is owned by G&CA’s largest air freight forwarder customer, Caribex Worldwide, Inc., which is itself a U.S. citizen. At the present time, G&CA conducts scheduled and charter cargo operations using one leased CV-580 aircraft primarily between Puerto Rico and Santo Domingo, Dominican Republic.

G&CA plans to market its proposed passenger charter services to leisure travel groups and Public Charter operators. The carrier proposes to focus its service between points in the eastern United States and vacation destinations in the Bahamas, Caribbean, Mexico and Central America. Initially the carrier will operate one leased 50-seat CV-580 aircraft. It may later transition to larger aircraft, including B-737-200 or B-727-200 aircraft, after it has established a presence in the marketplace.⁴ The carrier will continue to operate its all-cargo service.

Managerial Competence

The key members of G&CA’s management team are as follows: F. Lee Page Mason-President, Director of Operations, and Acting Chief Pilot;⁵ Ronald Tallent-General Manager; David Rowlands-Director of Maintenance; Edgar J. Cerezo-Chief Inspector; and John Felix-Director of Safety. We most recently reviewed these individuals in

³ See G&CA’s application filed April 30, 2001, at 3.

⁴ Although G&CA indicated it may add larger aircraft at a later date, it did not include the larger aircraft in its service proposal.

⁵ Mr. Mason is temporarily serving as G&CA’s Chief Pilot until the position can be filled on a permanent basis, which the carrier indicates, will be done before it commences passenger operations.

connection with the first year new entrant progress report that G&CA filed in January 2000. Moreover, the FAA has indicated that it has approved each of these individuals for their respective positions with the company.⁶

The proposed passenger service will involve the same type of aircraft that the carrier is currently operating and, with the exception of filling the Chief Pilot position, no additional key management or technical personnel will be needed. Therefore, we conclude that G&CA has the management and technical ability to conduct the proposed passenger service. However, prior to making G&CA's passenger authority effective, we will require that it submit resume and compliance information on the individual it hires as its new Chief Pilot.

Financial Plan and Operating Proposal

G&CA plans to market its passenger charter services between points in the eastern United States and vacation destinations in the Bahamas, Caribbean, Mexico and Central America operating one 50-seat CV-580 aircraft that it will lease. The carrier will continue to operate its all-cargo service.

G&CA has provided forecasts of its anticipated pre-operating and operating expenses for its first year of passenger operations. These forecasts indicate that G&CA will incur approximately \$160,000 in start-up costs and another \$559,650 in operating expenses during an average three-month period in the first year of revenue passenger operations. We have reviewed G&CA's expense forecasts and find that they appear to be reasonable.

In evaluating an applicant's financial fitness, the Department generally asks that the company have available to it resources sufficient to cover all pre-operating costs plus a working capital reserve equal to the operating costs that would be incurred in three months of proposed operations.⁷ In G&CA's case, based on the cost estimates noted above, the carrier will need to have access to funds of \$719,650 to cover all forecast pre-operating costs and to provide a three-month working capital reserve.

G&CA submitted a balance sheet as of June 30, 2001, which showed a current ratio of 1.4:1, working capital of \$10,708, and total stockholders' equity of negative \$206,523.

⁶ Before authorizing a carrier to conduct air transportation operations, the FAA also evaluates certain of the carrier's key personnel with respect to the minimum qualifications for those positions as prescribed in the Federal Aviation Regulations. The FAA's evaluation of these key personnel provides an added practical and in-person test of their skills and technical ability. The FAA has advised us that the key technical personnel listed above are acceptable to it.

⁷ Because projected operations during one or more of the first several months of actual air transportation services frequently do not include all costs that will be incurred during a normal period of operations, it is our practice to base our three-month test on one quarter of the first year's operating cost forecast. In calculating available resources, projected revenues cannot be used.

For the twelve-months ended June 30, 2001, the carrier reported a net loss of \$30,982.⁸

G&CA's capital requirements will be satisfied by a \$100,000 letter-of-credit from First Northwest Bank, which will be used towards the lease of the additional CV-580 aircraft, and additional capital from its owners Mr. and Mrs. Mason.⁹

Based on our review of this information, we conclude that G&CA will, with the backing of its owners, have sufficient financial resources to enable it to commence its proposed charter passenger operations without posing an undue risk to consumers or their funds.

However, should G&CA expand its operations to include large aircraft as defined in Part 298 of our rules, this financial fitness determination may no longer be valid.¹⁰ Therefore, we have decided to limit G&CA's authority to the use of aircraft with no more than 60 seats in its passenger operations and 18,000 pounds payload in its cargo operations.

Compliance Disposition

G&CA states that there are no actions or outstanding judgments against it, its owners, or its key personnel, nor have any charges of unfair, deceptive or anti-competitive business practices, or of fraud, felony or antitrust violations been brought against any of these parties. G&CA further states that there are no pending investigations, enforcement actions or formal complaints filed against it or its key personnel and that neither G&CA or its personnel have been involved in any aircraft accidents or incidents within the past year or at any time in the past which remains under investigation by the FAA or NTSB.

Our search of the Department's enforcement files found no record of problems involving this company, its owners, or its key personnel which would lead us to conclude that G&CA will not continue to demonstrate a satisfactory compliance disposition. The FAA states that G&CA has no open investigations and that there are no known records of violations, suspensions or warning letters. The FAA has advised us that G&CA works well with its inspectors and that it knows of no reason why we should not find the carrier fit to conduct the proposed passenger operations.

⁸ This compares to a net income for the 12 months ending December 31, 2000, of \$10,743.

⁹ Mr. & Mrs. Mason have been backing the financial requirements of G&CA for over ten years. They have submitted personal financial statements in support of their commitment to provide the necessary funding to meet G&CA's capital requirements, which evidence their ability to do so.

¹⁰ Section 298.2(h) defines "large aircraft" as any aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.

Based on these considerations, we conclude that G&CA has the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel will conform to applicable safety standards and that acceptable consumer relations practices will be followed.

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. We have also interpreted the Statute to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

As indicated above, 95 percent of the issued and outstanding voting stock is held by Mr. and Mrs. Mason, both of whom are U.S. citizens. The remaining five percent is owned by Caribex Worldwide, Inc., which is itself a U.S. citizen. Moreover, there is nothing in the record that would lead us to conclude that G&CA is controlled by non-U.S. citizens.

Based on the above, we conclude that the original findings of fitness with respect to G&CA are still valid; specifically, that the carrier continues to be a citizen of the United States within the meaning of the Statute and is fit willing, and able to conduct the charter passenger operations proposed in its applications in Dockets OST-01-9589 and OST-01-9590.

CERTIFICATE CONDITIONS & LIMITATIONS

G&CA's authority to conduct passenger operations will not become effective until the company has provided evidence that it has obtained Amended Operations Specifications from the FAA authorizing it to conduct charter passenger service and evidence of passenger liability insurance coverage that meets the requirements of Part 205 of our rules, along with a statement of any fitness-related changes that have occurred since the issuance of this order. At that time, we will amend and reissue its existing certificates to reflect its ability to conduct worldwide passenger charters with small aircraft.¹¹

Furthermore, we remind G&CA of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a carrier is found fit initially, it must remain fit in order to hold its authority. Should the carrier undergo any substantial changes in operations, ownership, management or financial condition, it should notify

¹¹ Under section 41109(a)(5) of the Statute and section 212.1, air carriers holding certificates to engage in scheduled operations may also conduct charter operations without limitation as to the points served.

our Air Carrier Fitness Division to report such changes as provided under section 204.5 of our rules.

REQUEST FOR CONFIDENTIAL TREATMENT

On July 11, and August 6, G&CA filed motions under section 302.12 of the Department's regulations requesting confidential treatment of personal financial statements of Mr. and Mrs. Mason identified as Exhibits G&CA-S/1-102 and G&CA-S/2-100. Those documents consist of various types of statements of investments including stock funds, retirement programs, money market and mutual funds and a personal balance sheet. G&CA states that this personal financial information is highly confidential and is not disclosed in any publicly-available document or forum. G&CA submits that the information at issue meets all three tests for confidential treatment in that subject financial reports are: (1) commercial or financial in nature, (2) obtained from a person outside of government and (3) privileged or confidential in nature.

Rule 12 instructs us to evaluate requests for confidential treatment in accordance with the standards of disclosure found in the Freedom of Information Act (5 U.S.C. section 552). [See *Gulf and Western Industries, Inc. v. United States*, 615 F.2d 527, 529 (D.C. Cir 1979)]

There is no question that the information for which confidential treatment is sought is financial or commercial in nature and that it was obtained from a person outside the government. The remaining question is whether the information is privileged or confidential--whether "disclosure of the information is likely to have either of the following effects: (1) impair the Government's ability to obtain necessary information; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained." [See *National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974)] Further, to be privileged or confidential, the information must not be the type that is usually released to the public. [See *Gulf and Western Industries, Inc. v. United States*, 615 F.2d 527, 530 (D.C. Cir. 1979)]

We have decided to grant confidential treatment to Exhibit G&CA-S/1-102 and G&CA-S/2-100. We agree with G&CA that disclosure of these personal financial statements could lead to a disincentive to investors or marketing partners. These documents are similar to those for which we have granted confidential treatment in the past and warrant similar treatment here.

ACCORDINGLY,

1. We find that Gulf & Caribbean Cargo, Inc. d/b/a Gulf & Caribbean Air continues to be fit, willing, and able and is authorized to engage in interstate and foreign charter air transportation of persons, property, and mail using small (60-seat or less) aircraft.

2. Upon receipt of the following documents, we will amend and reissue the certificates of public convenience and necessity issued previously to Gulf & Caribbean Cargo, Inc. d/b/a Gulf & Caribbean Air by Order 98-12-15 to reflect their effective date to engage in interstate charter air transportation:

- a. Evidence that Gulf & Caribbean Cargo, Inc., has obtained Amended Operations Specifications from the Federal Aviation Administration authorizing it to conduct charter passenger service;
- b. Evidence of passenger liability insurance coverage that meets the requirements of 14 CFR Part 205; and
- c. A statement of any fitness-related changes that have occurred at the carrier since the issuance of this order.

3. We grant the requests of Gulf & Caribbean Cargo, Inc., to withhold from public disclosure information submitted pursuant to Rule 12 on July 11, 2001 (Exhibit GCA-S/1-102) and August 6, 2001 (Exhibit GCA-S/2-100).

4. We will dismiss as moot the application for exemption filed by Gulf & Caribbean Cargo, Inc., in Docket OST-01-9358.

5. We will serve a copy of this order on the persons listed in Attachment A.

By:

SUSAN MCDERMOTT
Deputy 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>*

ATTACHMENT A

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