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Order 2001-5-12



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

Issued by the Department of Transportation
on the 11th day of May, 2001

SERVED: May 11, 2001

Application of

DHL AIRWAYS, INC.

for an exemption from 49 USC § 41101, pursuant to 49
U.S.C. § 40109 (U.S.-Kuwait via Brussels and Bahrain)

Docket OST-2000-6937 - 7

ORDER DISMISSING PETITION

By Notice of Action Taken, dated February 9, 2001, the Director, Office of International Aviation, acting under assigned authority,¹ renewed the exemption authority of DHL Airways, Inc. to operate scheduled all-cargo services between the United States and Kuwait, and to integrate that authority with its certificate authority on Route 692. No objections to DHL's application were filed. The Director renewed the authority for a period of two years.

On March 9, 2001, Federal Express filed a petition seeking review of the staff's action renewing DHL's authority and urging the Department to revoke the authority granted to DHL.² In support of its petition, Federal Express argues that DHL fails to comply with U.S. citizenship requirements for authorization of the exemption authority at issue. It further argues that DHL's failure to inform the public and the Department of citizenship changes of DHL warrants review of the staff action and revocation of the authority granted.

DHL filed a reply, arguing that Federal Express' request is based on a misunderstanding of the facts, that DHL Airways remains a citizen of the United States within the meaning of the statute, and that the Department should dismiss Federal Express' petition.³

¹ 14 CFR 385.13.

² Federal Express' petition was not timely filed. Under the Department's rules, petitions for review were due February 19. Accordingly, Federal Express accompanied its petition with a motion for leave to file an otherwise unauthorized document. We will grant the motion.

³ DHL's answer was filed as a consolidated answer to Federal Express' petition in Docket OST-2000-6937 as well as a Third-Party Complaint filed by Federal Express in Docket OST-2001-8736 raising the same citizenship issues.

We have decided to dismiss Federal Express' petition without reaching the merits. As discussed in the Department's order dismissing the Third-Party Complaints of Federal Express and United Parcel Service Co., and being issued contemporaneously, the Department is currently conducting a continuing fitness review of DHL Airways and the issues raised by Federal Express are more appropriately considered in that context.

ACCORDINGLY,

1. We grant the motion of Federal Express Corporation for leave to file an otherwise unauthorized document in Docket OST-2000-6937;
2. We dismiss, without prejudice, the petition of Federal Express for review of the February 9, 2001 staff action in Docket OST-2000-6937; and
3. We will serve this order on Federal Express Corporation, DHL Airways, Inc., the U.S. Department of State (Office of Aviation Negotiations), the Ambassador of Kuwait in Washington, D.C., and the Federal Aviation Administration (AFS-200).

By:

SUSAN MCDERMOTT
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

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