

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

_____))
))
Mahan Airways))
Mahan Tower))
No. 21, Azadegan St.))
M.A. Jenah Exp. Way))
Tehran, Iran; and))
))
Gatewick LLC))
a/k/a Gatewick Freight & Cargo Services))
a/k/a/ Gatewick Aviation Services))
G#22 Dubai Airport Free Zone))
P.O. Box 393754))
Dubai, United Arab Emirates))
))
and))
))
P.O. Box 52404))
Dubai, United Arab Emirates))
))
and))
))
Mohamed Abdulla Alqaz Building))
Al Maktoum Street))
Al Rigga))
Dubai, United Arab Emirates.))
))
_____)

**ORDER RENEWING ORDER TEMPORARILY DENYING EXPORT
PRIVILEGES AND ALSO MAKING THAT TEMPORARY DENIAL OF
EXPORT PRIVILEGES APPLICABLE TO RELATED PERSON**

Pursuant to Section 766.24 of the Export Administration Regulations, 15 C.F.R. Parts 730-774 (2010) (“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 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. Additionally, pursuant to Section 766.23 of the Regulations, including the provision of notice and an opportunity to respond, I find it necessary to add the following entity as a related person:

Gatewick LLC
a/k/a Gatewick Freight & Cargo Services
a/k/a Gatewick Aviation Services
G#22 Dubai Airport Free Zone
P.O. Box 393754
Dubai, United Arab Emirates

and

P.O. Box 52404
Dubai, United Arab Emirates

and

Mohamed Abdulla Alqaz Building
Al Maktoum Street
Al Rigga
Dubai, United Arab Emirates

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 Blue Airways, of Yerevan, Armenia (“Blue Airways of Armenia”), as well as the “Balli Group Respondents,” namely, 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. 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 to the TDO both Blue Airways FZE, of Dubai, United Arab Emirates (“the UAE”), and Blue Airways, also of Dubai, United Arab Emirates (“Blue Airways UAE”), as persons related to Blue Airways of Armenia. (Blue Airways of Armenia, Blue Airways FZE, and Blue Airways UAE are 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, Acting Assistant Secretary Delli-Colli renewed the TDO for an additional 180 days against Mahan Airways.³ BIS did not seek renewal of the TDO against the Blue Airways Respondents, which BIS believed at that time had ceased operating, or against the Balli Group Respondents.

On March 9, 2010, I renewed the TDO against Mahan Airways for an additional 180 days. That renewal was effective upon issuance and was published in the Federal Register on March 18, 2010.

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.

On August 13, 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 Mahan in accordance with Section 766.5 of the Regulations. No opposition to renewal of the TDO has been received from Mahan Airways.

Additionally, BIS requested that I add Gatewick LLC (“Gatewick”) to the TDO as a related person in accordance with Section 766.23. Gatewick was provided notice of BIS’s intent to add it to the TDO and on August 26, 2010, submitted a written opposition.

II. Renewal of the TDO

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 the 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 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.

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

Moreover, as discussed in the September 11, 2009 and March 9, 2010 Renewal Orders, Mahan Airways continued to operate at least two of Aircraft 1-3 in violation of the Regulations and the TDO,⁵ 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.

The March 9, 2010 Renewal Order also noted that a court in the United Kingdom ("U.K.") had 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. Mahan Airways and the Balli Group Respondents have been litigating before the U.K. court concerning ownership and control of Aircraft 1-3. Blue Airways LLC also has been a party to that litigation. In a letter to the U.K. court dated January 12, 2010, Mahan Airways' Chairman indicated, inter alia, that Mahan Airways opposes U.S. Government actions against Iran, that it continued 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.

OEE's evidence indicates that Aircraft 1-3 remain in Mahan Airways' possession, control, and livery in Tehran, Iran. These aircraft also remain, to BIS's knowledge, airworthy.

OEE also has submitted evidence that Mahan Airways' violations of the TDO have extended beyond operating U.S.-origin aircraft in violation of the TDO and attempting to acquire

⁵ The third Boeing 747 appeared to have undergone significant service maintenance and may not have been operational at the time of the March 9, 2010 Renewal Order.

additional U.S.-origin aircraft. In February 2009, while subject to the TDO, Mahan Airways participated in the export of computer motherboards, items subject to the Regulations and designated as EAR99, from the United States to Iran, via the UAE, in violation of both the TDO and the Regulations, by transporting and/or forwarding the computer equipment from the UAE to Iran. Mahan Airways' violations were facilitated by Gatewick, which not only participated in the transaction, but also has stated to BIS that it is Mahan Airways' sole booking agent for cargo and freight forwarding services in the UAE.

As discussed below, renewal of the TDO against Mahan is necessary and appropriate. Renewal is necessary with or without the evidence relating to Mahan Airways' violations regarding the computer motherboards, but that evidence is in any event also pertinent to BIS's request to add Gatewick to the TDO as a related person.

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 the evidence presented by BIS convincingly demonstrates that Mahan Airways has repeatedly violated the EAR and the TDO, that such knowing violations have been significant, deliberate and covert, and that there is a likelihood of future violations. I find that, as alleged by OEE, the violations have involved both U.S.-origin aircraft and computer equipment that are subject to the Regulations. A renewal of the 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.⁶

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. Addition of Related Person

A. Legal Standard

Section 766.23 of the Regulations provides that “[i]n order to prevent evasion, certain types of orders under this part may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Orders that may be made applicable to related persons include those that deny or affect export privileges, including temporary denial orders” 15 C.F.R. § 766.23(a).

B. Analysis and Findings

OEE has requested that Gatewick be added as a related person in order to prevent evasion of the TDO. OEE’s request includes evidence, confirmed in writing by Gatewick, that indicates that a significant and on-going business connection between Gatewick and Mahan Airways. Gatewick officials previously told BIS during a 2009 post shipment verification that it acts as Mahan Airways’ sole booking agent for cargo and freight forwarding services in the UAE, a major transshipment hub. This business connection was again confirmed by Gatewick in its written opposition to the related person’s notice it received from BIS. Gatewick’s opposition

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. I note, however, that Mahan Airways’ statements and actions in that litigation are consistent with my findings here.

also included a copy of its General Cargo Sales Agreement (“GSA”) with Mahan Airways, which remains in effect. Through this significant business relationship, Gatewick has the ability, with Mahan Airways’ authorization and agreement, to use Mahan’s import code to clear UAE customs and then re-book cargo on outbound Mahan flights, including to Iran.

In its August 26, 2010 opposition, Gatewick admits to having a current GSA with Mahan Airways, but it asserts that it is not owned by Mahan and does not have any common directors with Mahan, and thus should not be added to the TDO. Gatewick’s submission includes copies of corporate registration documents in addition to the GSA with Mahan. However, rather than distancing itself from Mahan Airways and its co-conspirators, the documents provided by Gatewick actually reveal other connections or relationships between Gatewick and Mahan Airways, as well as the Blue Airways Respondents.

The GSA with Mahan Airways was signed on Gatewick’s behalf by its Managing Director, Pejman Mahmood Kosarayanifard, also known as Kosarian Fard, who also owns 35% of Gatewick according to corporate registration documents submitted by the company. Kosarian Fard also played an important role in Mahan Airways’ acquisition of Aircraft 1-3 discussed above, as indicated by evidence obtained by BIS during its investigation and as acknowledged by Kosarian Fard in his testimony in the U.K. litigation referenced above. Kosarian Fard was a founder, the majority shareholder, and the Commercial Director of Blue Airways of Armenia. In that capacity, he signed the Boeing 747 lease agreements with the Balli Group that ultimately led to Mahan Airways’ acquisition of Aircraft 1-3.

Kosarian Fard’s written testimony in the U.K. litigation included the following concerning his “close relationship” with Mahan Airways and some of the acts he took at its

direction:

As I have said, I was majority shareholder of Blue [Airways] but in the summer of 2007, I agreed to sell a 51% stake in Blue to Skyco (UK) Ltd. I did this at the request of Mahan. Given my close relationship with Mahan, I did not ask questions but, again, acted on the basis of the trust I had in Mr. Arabnejad and Mr. Mahmoudi [two Mahan Airways' directors].

Kosarian Fard Written Statement to U.K. Court (signed and dated May 27, 2009 by hand), at page 7, paragraph 12.

The record also shows that Gatewick is located at the same G#22 Dubai Airport Free Zone location formerly used by the Blue Airways FZE and Blue Airways UAE.

Based on the information provided by OEE and Gatewick's submission, I find that Gatewick's significant and on-going business relationship and/or connections with Mahan Airways satisfies the requirements of Section 766.23, and that Gatewick's addition to the TDO as a related person is necessary to prevent evasion. This is demonstrated not only by the nature and significance of Gatewick's relationship with Mahan Airways and its stated role as Mahan Airways' sole booking agent in the UAE for Mahan's cargo and freight forwarding services, but also by Gatewick's participation with Mahan Airways in the 2009 transaction involving the export of computer motherboards to Iran, via the UAE, in violation of the outstanding TDO against Mahan. It is further demonstrated by Kosarian Fard's central role at Gatewick, as Managing Director and owner, his admitted close relationship with Mahan Airways, and the prominent role he played in the unlawful re-export of Aircraft 1-3 to Mahan.

IV. ORDER

IT IS THEREFORE ORDERED:

FIRST, that MAHAN AIRWAYS, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp.Way,

Tehran, Iran, and GATEWICK LLC, A/K/A GATEWICK FREIGHT & CARGO SERVICES, A/K/A GATEWICK AVIATION SERVICE, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates, and P.O. Box 52404, Dubai, United Arab Emirates, and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates (each a "Denied Person" and collectively the "Denied Persons"), 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;

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 a Denied Person any item subject to the EAR;
- B. Take any action that facilitates the acquisition or attempted acquisition by a 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 a 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 a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a 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 a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a 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.

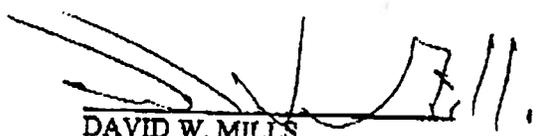
THIRD, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also 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 Sections 766.24(e) and 766.23(c)(2) of the EAR, Mahan Airways and/or Gatewick LLC 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 21202-4022.⁷

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. A renewal request may be opposed as provided in Section 766.24(d), 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.⁸

A copy of this Order shall be provided to Mahan Airways and Gatewick LLC and shall be published in the Federal Register. This Order is effective immediately and shall remain in effect for 180 days.



DAVID W. MILLS
Assistant Secretary of Commerce
for Export Enforcement

Issued this 3rd day of September 2010.

⁷ A party named or added to temporary denial order as a related person may appeal its inclusion as a related person, but not the underlying basis for the issuance of the TDO. See Section 766.23(c).

⁸ A party named or added as a related person may not oppose the issuance or renewal of a temporary denial order, but may file an appeal in accordance with Section 766.23(c). See also note 7, *supra*.