

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

Balli Group PLC)
5 Stanhope Gate)
London, UK)
W1K 1AH)
Balli Aviation)
5 Stanhope Gate)
London, UK)
W1K 1AH)
Balli Holdings)
5 Stanhope Gate)
London, UK)
W1K 1AH)
Vahid Alaghband)
5 Stanhope Gate)
London, UK)
W1K 1AH)
Hassan Alaghband)
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London, UK)
W1K 1AH)
Blue Sky One Ltd.)
5 Stanhope Gate)
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Blue Sky Two Ltd.)
5 Stanhope Gate)
London, UK)
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Blue Sky Three Ltd)
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Blue Sky Four Ltd)
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Blue Sky Five Ltd.)
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Blue Sky Six Ltd.)
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Blue Airways)
8/3 D Angaght Street)
376009 Yerevan)
Armenia)

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

Respondents.)

and)

Blue Airways FZE)
a/k/a Blue Airways)
#G22 Dubai Airport Free Zone)
P.O. Box 393754 DAFZA)
Dubai, UAE)

Blue Airways)
Riqa Road)
Dubai 52404)
UAE)

Related Persons.)

ORDER RENEWING ORDER TEMPORARILY DENYING EXPORT PRIVILEGES

Pursuant to Section 766.24 of the Export Administration Regulations, 15 C.F.R. Parts 730-774 (2008) ("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 Respondents 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., Blue Sky Six Ltd., Blue Airways and Mahan Air (collectively, "Respondents") and Blue Airways FZE and Blue Airways (collectively the "Related Persons"), 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, I signed an Order Temporarily Denying the Export Privileges of the Respondents for 180 days on the grounds that its issuance was necessary in the public interest to prevent an imminent violation of the Regulations ("TDO"). Pursuant to Section 766.24(a), the TDO was issued *ex parte* and went into effect on March 21, 2008, the date it was published in the *Federal Register*. On July 18, 2008, I issued an Order adding Blue Airways FZE and Blue Airways, both of Dubai, United Arab Emirates, as Related Persons to the TDO in accordance with Section 766.23 of the Regulations.¹ The TDO would expire on September 17, 2008, unless renewed in accordance with Section 766.24 of the Regulations.

On August 28, 2008, BIS, through its Office of Export Enforcement ("OEE"), filed a written request for renewal of the TDO against the Respondents for 180 days and served a copy of its request on the Respondents in accordance with Section 766.5 of the Regulations. On September 10,

¹ The Related Persons Order was issued in accordance with Section 766.23 of the Regulations, 15 C.F.R. § 766.23, and was published in the *Federal Register* on July 24, 2008.

2008, 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. (collectively, “Balli” or the “Balli Respondents”) filed a written opposition to the request for renewal of the TDO. No opposition to renewal of the TDO was received by Respondents Blue Airways of Armenia or Mahan Air of Iran.

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 the term “imminent” violation is 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. Arguments

BIS’s request for renewal of the TDO was based upon the facts underlying the issuance of the initial TDO, as well as evidence of continued actions by the Respondents that demonstrate a willingness to disregard U.S. export controls. The initial TDO was issued as a result of evidence that showed the Respondents 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, without the required U.S. Government authorization. Further evidence submitted by BIS indicated that Respondents were attempting to re-export an additional three U.S.-origin Boeing 747s to Iran (“Aircraft 4-6”), and had ignored a re-delivery order for Aircraft 4-6 issued by BIS in accordance with Section 758.8(b) of the Regulation. In addition, as evidenced in BIS’s renewal request and the Balli Group’s opposition and “supplemental disclosure” dated September 10, 2008, the record before me also indicates that Aircraft 1-3 continue to be flown on Mahan Air routes in violation of the Regulations and the TDO. It also shows that Aircraft 1-3 have been and continue to be flown in further violation of the Regulations and the TDO on the routes of Iran Air, an Iranian Government airline.²

In its opposition to the request for renewal of the TDO, the Balli Group Respondents assert that OEE’s request for renewal does not meet the legal requirements and that further violations are not imminent. The Balli Respondents also assert that any violations of the Regulations involving Aircraft 1-3, and any false or misleading statements by the Balli Respondents, were not done or made with knowledge and were instead based on a misunderstanding of the Regulations, including the term “re-export”; that they have been fully cooperating with BIS and are making concerted efforts to recover Aircraft 1-3 from Blue Airways of Armenia; and that the resume of ██████████, upon which OEE relied in part in its renewal request, is uncorroborated.³ The Balli Respondents also assert that if BIS’s goal is to prevent imminent or on-going violations of the EAR, BIS should limit renewal of

² Engaging in conduct prohibited by a denial order violates the Regulations. 15 C.F.R. §§ 764.2(a) and (k).

³ None of the Respondents appealed the initial TDO.

the TDO to Respondents Blue Airways and Mahan Air only, and state that they do not contest that BIS has grounds to renew the TDO against Blue Airways and Mahan Air.

C. Findings

In determining whether to renew the TDO in order to prevent imminent violations of the Regulations, I have reviewed the entire record including BIS's original request for a TDO filed in March 2008, BIS's request to renew the TDO submitted on August 28, 2008, and the September 10, 2008 opposition submission filed by the Balli Respondent and its related supplemental disclosure that was filed under separate cover and also is dated September 10, 2008.

I find that violations of the Regulations have occurred involving the unlicensed re-export to Iran of Aircraft 1-3. While the Balli Respondents have asserted that they did not understand the restrictions on the re-export to Iran of U.S.-origin aircraft, their submission and related evidence are more probative of what violations have occurred, rather than calling into question BIS's evidence or its renewal request. Monthly Aircraft Reports, in the possession of the Balli Respondents per the stated lease agreements with Respondent Blue Airways, provide ample evidence that Aircraft 1-3 have been regularly being flown on Mahan Air routes, both before the Balli-Blue Airways lease agreements were extended in November 2007 and well into the TDO period.⁴ Moreover, these reports, as acknowledged in Balli's submission, also show Aircraft 1-3 regularly being flown on Iran Air routes. Rather than undercutting BIS's requests, as Balli suggests, this evidence shows that the scope of violations is greater and even more significant than indicated in BIS's initial and renewal requests.

⁴ The Monthly Aircraft Reports that were referenced by Balli in its September 10, 2008 submission do not appear to include such reports post-dating June 2008. The record indicates, however, that Aircraft 1-3 are still being operated in violation of the Regulations.

I also find that the July 2007 letters to Balli from Boeing explicitly alerted Balli that Boeing would not be able to service Aircraft 1-3 based on evidence that the aircraft were being operated contrary to U.S. export control laws and thus put the Balli Respondents on notice regarding potential violations involving the lease of Aircraft 1-3 to Blue Airways. Similarly, by letter dated October 10, 2007, BIS warned the Balli Group, via its English counsel, that “[i]t has come to BIS’s attention there is evidence that during this lease agreement Blue Airways operated the three 747s aircraft by or for the benefit of an Iranian entity, specifically Mahan Air.”

In spite of these warnings, the Balli Respondents contend that they remained without knowledge of any potential unlawfulness regarding their conduct—maintaining what they term their “fundamental misunderstanding” of U.S. trade prohibitions.” Balli’s Opposition, at 9. They assert that they “failed to focus on the underlying substantive legal concerns associated with Boeing and BIS communications” because they believed they were part of a “disinformation campaign” orchestrated by “Iranian expatriate groups that have a long history of hostility to Balli interests and the Alaghband family[,]” including “militant opposition groups hostile to Iran, including the Mujahedin-e-Khalq.” Balli’s Supplemental Disclosure, at 15, attached to and referenced in Balli’s Opposition; see also Balli’s Opposition, at 9.

I find this assertion to be entirely unsubstantiated and unpersuasive. As appears to occur throughout Balli’s opposition, this assertion is not supported by any citation to any witness statement, whether sworn or unsworn, whether from one of the Balli Respondents or a third party. Moreover, evidence of or a finding of knowledge can be based not only on affirmative or positive knowledge, but also “is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person’s willful avoidance of facts.” Section 772.1, at definition of “Knowledge.” In sum, Balli’s asserted explanation as to its claimed lack of knowledge is not

credible or substantiated, and even if it were, knowledge would be established on the record here at least by a conscious disregard or willful ignorance.

Similarly, to the extent that the Balli Respondents' rely on a lack of knowledge or lack of understanding "defense," those efforts are unavailing. BIS has alleged that false statement violations have occurred concerning the destination and end-user of Aircraft 1-3. The record supports the conclusion that false or misleading statements were made, whether affirmatively or through concealment or omission of material facts. See Section 764.2(g) (Misrepresentation and Concealment of Facts). As noted above, at no point before last week did the Balli Respondents disclose Mahan Air's involvement (or Iran Air's). Moreover, after being warned by BIS (and Boeing), the Balli Respondents represented to BIS (through their English counsel) by letter dated November 16, 2007, that they "ha[d] tightened contractual representations required from Blue Airways to make more explicit that a breach of U.S. export laws would constitute a breach of the leases...." The extension of the lease agreements signed by the Balli Respondents and Blue Airways in November 2007 (again shortly after BIS expressed its concern that the planes were being operated in violation of the Regulations) contains no such provision. In fact, the Balli Respondents now assert that such language was somehow covertly removed from the draft lease agreements by Blue Airways and that they, while being represented by a large London-based law firm signed the agreements anyway. At all relevant times, Balli knew that the aircraft were regularly being operated in and out of Iran.

I also find that although the Balli Respondents have now turned over a number of documents to BIS regarding Aircraft 1-3 and Aircraft 4-6, including in conjunction with a supplemental disclosure dated September 10, 2008 (the same day its opposition to renewing the TDO was filed), they have failed to produce any documents regarding lease payments by Blue Airways that are required under

the terms of the lease agreements. The failure to produce to BIS, six months after the TDO issued and three months after the documents were specifically requested by BIS, what should be readily available information in any legitimate, arms length commercial transaction raises a significant concern on BIS's part. Parties that describe themselves, as the Balli Respondents do in relation to Aircraft 1-3, as "passive investors" with no operational role or interest, but focused instead on cash flow and opportunities to sell the aircraft should market conditions improve, could be expected to be particularly focused on such payment issues and documents.

While BIS supports legitimate efforts to bring the violations to a halt, and has under consideration Balli's recent request to engage in certain negotiations with Blue Airways that Balli has indicated will be designed to accelerate recovery of Aircraft 1-3 from Blue Airways, such stated intentions are not a sufficient basis to sustain Balli's position that the TDO need not and should not be renewed. Moreover, according to Balli's own submissions, it was not until June 27, 2008, over three months after the TDO was issued, that Balli served Blue Airways with notices of breach or termination under the leases. This appears to be the only legal step taken to date by the Balli against Blue Airways, a step which Balli states Blue Airways has contested under the terms of the lease agreements. Similarly, the request for permission to negotiate an "accelerated" recovery of the aircraft was not taken until September 4, 2008, just two weeks before the TDO was set to expire. Neither the extent nor pace of these actions has stemmed or appears likely to stem the ongoing violations, nor does either contradict BIS's case or demonstrate that Balli's dealings with Blue Airways have been arms-length or that its only tie to Blue Airways is a contractual one.

Finally with regard to Aircraft 1-3, the Balli respondents argue that there is no "substantive corroborating evidence" concerning the resume of ██████████ referenced in BIS's renewal request. However, the record here clearly demonstrates, inter alia, that violations of the Regulations

have occurred, that those violations involved Mahan Air, and that the Balli Respondents knew or had reason to know of those violations. The Balli Respondents nonetheless renewed the lease agreements with Blue Airways, misrepresented or concealed material facts during BIS's investigation, and have failed to take significant or diligent action against Blue Airways. The fact that the violations have also involved Iran Air, an Iranian Government airline, does not undermine the evidence relating to Mahan Air, given the evidence referenced by BIS that the Iranian Government is engaged in concerted covert efforts to acquire U.S.-origin aircraft. The evidence relating to Iran Air underscores, rather than undermines, the need for renewal of the TDO.

Moreover, regardless of the weight accorded the ██████████ resume, the record demonstrates that violations are imminent; indeed, that they are ongoing. In short, in many ways, the Balli Respondents' arguments amount to a bald assertion that BIS should "trust us," but the record here indicates the contrary.

I have considered all of Balli's arguments regarding Aircraft 1-3 and found them unpersuasive. With regard to Aircraft 4-6, absent additional or supplemental evidence showing that the planes have in fact been repossessed by the lender and that the Balli Respondents no longer have or claim any interest in those aircraft, I find it premature to remove Blue Sky Four Ltd., Blue Sky Five Ltd., or Blue Sky Six Ltd. from the TDO. BIS will consider appropriate supplemental submissions by the Balli Respondents regarding Aircraft 4-6.⁵

I find that the evidence presented by BIS demonstrates that the Respondents have violated the EAR and the TDO involving re-exports to Iran of Aircraft 1-3, that such violations have been

⁵ The Balli Respondents state in their submission that they were compelled to default on the loan financing for Aircraft 4-6, because BIS denied their requested to re-negotiate or extend that financing. This assertion is unsubstantiated and without merit. I note, inter alia, that as with other actions taken relating Aircraft 1-3, the Balli Respondents filed their request at the eleventh hour, that the lender itself never sought permission to enter into negotiations with the Balli Respondents, and that the Balli Respondents do not address the option of self-financing the aircraft through the Balli Group.

significant, deliberate and covert, and that there is a likelihood of future violations. As such, a Temporary Denial Order (“TDO”) is needed to give notice to persons and companies in the United States and abroad that they should continue to cease dealing with the Respondents in export transactions involving items subject to the EAR. Such a TDO is consistent with the public interest to prevent or preclude violations of the EAR.

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

III. ORDER

IT IS THEREFORE ORDERED:

FIRST, that the Respondents, BALLI GROUP PLC, 5 Stanhope Gate, London, UK, W1K 1AH; BALLI AVIATION, 5 Stanhope Gate, London, UK, W1K 1AH; BALLI HOLDINGS, 5 Stanhope Gate, London, UK, W1K 1AH; VAHID ALAGHBAND, 5 Stanhope Gate, London, UK, W1K 1AH; HASSAN ALAGHBAND, 5 Stanhope Gate, London, UK, W1K 1AH; BLUE SKY ONE LTD., 5 Stanhope Gate, London, UK, W1K 1AH; BLUE SKY TWO LTD., 5 Stanhope Gate, London, UK, W1K 1AH; BLUE SKY THREE LTD., 5 Stanhope Gate, London, UK, W1K 1AH; BLUE SKY FOUR LTD., 5 Stanhope Gate, London, UK, W1K 1AH; BLUE SKY FIVE LTD., 5 Stanhope Gate, London, UK, W1K 1AH; BLUE SKY SIX LTD., 5 Stanhope Gate, London, UK, W1K 1AH; BLUE AIRWAYS, 8/3 D Angaght Street, 376009 Yerevan, Armenia; and MAHAN AIRWAYS, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp.Way, Tehran, Iran (each a “Denied Person” and collectively the “Denied Persons”), and BLUE AIRWAYS FZE, a/k/a Blue Airways, #G22 Dubai Airport Free Zone, P.O. Box 393754 DAFZA, Dubai, United Arab Emirates and BLUE AIRWAYS, Riqqa Road, Dubai 52404, United Arab Emirates (each a “Related Person” and collectively the “Related 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 the Denied Persons or Related Persons any item subject to the EAR;

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

D. Obtain from the Denied Persons or Related Persons 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 Persons or Related Persons, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Persons or Related Persons 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 any of the Denied Persons 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 Respondents 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 Respondents 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 Respondents and the Related Persons and shall be published in the Federal Register.

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


DARRYL W. JACKSON
Assistant Secretary of Commerce
for Export Enforcement

Entered this 17th day of September, 2008.