

Bd

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
01 JAN -2 PM 4:12

Application of)
Aviones de Oriente, Avior, C.A.)
For an exemption from 49 U.S.C. § 41301)

Docket OST 01- 86 05

APPLICATION OF AVIONES DE ORIENTE, AVIOR, C.A.
FOR AN EXEMPTION

Communications with respect to this document should be addressed to:

George R. Harper
KILPATRICK STOCKTON LLP
200 South Biscayne Boulevard
Suite 2000
Miami, Florida 33131-2319
(786) 777-8006

Counsel for
Aviones de Oriente, Avior, C.A.

NOTICE: Avior is requesting approval of this application by January 12, 2001. Interested persons may support or oppose this application by filing an answer upon counsel for Avior and all persons served with this application.

January 2, 2001

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

_____)
Application of)
)
Aviones de Oriente, Avior, C.A.)
)
For an exemption from 49 U.S.C. § 41301)
_____)

**APPLICATION OF AVIONES DE ORIENTE, AVIOR, C.A.
FOR AN EXEMPTION**

Pursuant to 49 U.S.C. § 40109 and Subpart C of the Department's Procedural Regulations, Aviones de Oriente, Avior, C.A. ("Avior") hereby requests an exemption from 49 U.S.C. § 41301 in order to engage in scheduled and charter foreign air transportation of persons, property and mail as more fully described below. Avior respectfully requests that the Department approve this application on or before January 12, 2001.

In support of this Application, Avior states as follows:

1. **Name and Address of Applicant.** The full name and address of applicant is Aviones de Oriente, Avior, C.A., Aeropuerto José Antonio Anzoategui, Zona de Hangares Norte #9, Barcelona, Venezuela.

2. **Form of Organization.** Avior is a company organized and existing under the laws of Venezuela. Avior was formed pursuant to the Venezuelan Commercial Code. A copy of Avior's Certificate of Registration, issued by Venezuela's Commercial Registration Office, is attached as Exhibit AVIOR-100.

3. **Address of Relevant Aviation Authority.** The competent authority with regulatory jurisdiction over Avior is the Ministry of Infrastructure, General Division of Air Transportation, Parque Central, Torre Este, Piso 32, Av. Lecuna, Caracas, Venezuela; Division of Regional Aircraft Transportation and Traffic Aviation, Parque Central, Torre Este, Piso 34, Av. Lecuna, Caracas, Venezuela; and Division of International Aviation, Parque Central, Torre Este, Piso 32, Av. Lecuna, Caracas, Venezuela.

4. **Proposed Services.** Avior requests an exemption to engage in (i) scheduled foreign air transportation of persons, property and mail between Barcelona, Venezuela on the one hand and Miami, Florida, on the other hand and (ii) charter foreign air transportation of persons, property and mail between any point or points in Venezuela, on the one hand, and any point or points in the United States, on the other hand, either directly or via intermediate points in other countries, with or without stopovers, and beyond and any other charters pursuant to Part 212 of the Department's regulations, as necessary. For its proposed services to the U.S., Avior intends to use Boeing 727-200 aircraft operated pursuant to a wet lease arrangement with an authorized Part 121 or Part 129 carrier.

Avior plans to commence services to the U.S. on or about January 15, 2001 providing scheduled and charter passenger services between points in Venezuela and points in the United States. Avior is fit, willing and able to perform properly the foreign air transportation for which authority is requested in this Application and to conform to the provisions of Title 49 of the United States Code as well as the rules, regulations and requirements issued thereunder. Avior will accept all terms, limitations and conditions that the Department normally attaches to exemption authority for foreign air transportation.

5. **Operating Authority.** Avior currently holds an operating license from the Government of Venezuela to engage in charter air transportation between Venezuela and the United States. A copy of Avior's operating license, along with the related operations specifications, are included as Exhibit AVIOR-200 attached hereto. Avior's operating license includes authority for charter passenger operations to the United States. Avior anticipates that it will receive additional license authority from the Government of Venezuela prior to the end of January 2001 authorizing Avior to conduct scheduled air transportation between Barcelona, Venezuela and Miami. A copy of Avior's operating license for scheduled service will be forwarded to the Department upon its issuance by the Venezuelan authorities. Venezuela is a party to the Convention On International Aviation (Chicago Convention).

6. **Ownership and Control of the Applicant.** Avior is a privately owned company and receives no financial assistance from the Government of Venezuela. All of

the outstanding shares of Avior are held by Rafael Ciarcia Walo, a citizen of Venezuela and Jorge Añez Dáger, a citizen of Venezuela. Mr. Rafael Ciarcia Walo owns fifty percent (50%) of the outstanding shares of Avior and Mr. Jorge Añez Dager owns fifty percent (50%) of the outstanding shares of Avior. Avior is owned and controlled by citizens of Venezuela. The name and citizenship of each member of Avior's board of director are as follows:

<u>Name</u>	<u>Citizenship</u>
Rafael Ciarcia Walo	Venezuela
Jorge Añez Dáger	Venezuela

7. **Key Management Personnel.** All of Avior's officers, directors and management personnel have considerable experience in the aviation industry. The names and citizenship of Avior's key management personnel are as follows:

<u>Name</u>	<u>Title</u>	<u>Citizenship</u>
Rafael Ciarcia Walo	President	Venezuela
Jorge Añez Dáger	Vice President	Venezuela
Luis Adolfo Clavijo Escobar	Chief Pilot	Venezuela
Alirio Gomez	Manager – Security	Venezuela
Augustin Somoano	Manager – Security	Venezuela
Miguel Martinez	Manager-Maintenance	Venezuela

8. **History of Operations.** Applicant is a Venezuelan national airline certificated by the Government of Venezuela in 1998. Avior commenced domestic operations in 1994 and international charter services in 1999. The carrier currently operates domestic passenger flights and international passenger charter flights between Venezuela and Caribbean destinations with Beechcraft 1900D and Cessna Grand Caravan 208B aircraft. Avior operates daily and weekly flights to 22 destinations. Avior is expanding its passenger charter operations out of Venezuela and the Caribbean in response to the tremendous demand for services to Florida. Avior's proposed flights to the U.S. would provide significant benefits to the U.S. markets it intends to serve.

9. **Description of Aircraft and Maintenance Arrangements.** Avior will operate to the U.S. with a Boeing 727-200 aircraft with seating capacity for 172 passengers. The aircraft is expected to be registered in the U.S. The aircraft will be maintained pursuant to Avior's agreement with the wet lease operator of its services to the United States.

10. **Financial Summary.** Attached hereto as Exhibit AVIOR-300 is a summary of Avior's financial statements, including a balance sheet showing current assets and liabilities and a profit and loss statement for calendar year(s) 1998 and 1999. Attached as Exhibit AVIOR-301 is a pro forma balance sheet and revenue forecast for Avior's international operations for calendar year 2001. Also attached as Exhibit AVIOR-302 is a pro forma balance sheet and revenue forecast for Avior's domestic and

international operations for the period from July 2000 to June 2002. All financial data provided for Avior is in U.S. dollars.

11. **Bilateral Authority.** The scheduled service authority requested by Avior in this application is provided for in the U.S.-Venezuela Air Transport Agreement. Although the U.S.-Venezuela bilateral does not address charter services, there are currently five U.S. carriers exercising scheduled passenger and cargo operating rights to Venezuela. Therefore, sufficient comity and reciprocity exists to support approval by the Department of the charter services requested by Avior in this application.

12. **Insurance Coverage.** Prior to its commencement of services to the U.S., Avior will provide the Department with a certificate of insurance on an appropriate DOT form from the Part 121 or Part 129 carrier authorized to conduct wet lease services on Avior's behalf. Avior will be named as an additional insured on such insurance certificate, pursuant to DOT requirements.

13. **Waiver of Warsaw Convention Liability Limits.** Copies of the originally executed agreement with the Department of Transportation (Montreal Agreement) waiving liability limits under the Warsaw Convention (DOT Form 4523) will be filed with the Department prior to Avior's commencement of services to the U.S.

14. **Aviation Disaster Family Assistance Plan.** Attached hereto as Exhibit AVIOR-400 is a draft of the Aviation Disaster Family Assistance Plan ("Assistance

Plan”) which Avior is required to provide in connection with services to the U.S. Upon grant of the requested exemption, Avior will submit a final version of the Assistance Plan to the Department and the National Transportation Safety Board.

15. **Passenger Manifest Information Compliance Plan.** Attached hereto as Exhibit AVIOR-500 is a draft of the Passenger Manifest Information Compliance Plan (“Compliance Plan”) which Avior is required to provide in connection with services to the U.S. Upon grant of the requested exemption, Avior will submit a final version of the Compliance Plan to the Department.

16. **Estimated Fuel Usage.** Based upon its anticipated services to and from the United States, Avior expects that its annual fuel consumption will be less than ten million gallons. Thus, issuance of the requested exemption will not constitute a “major regulatory action” under the Energy and Conservation Act of 1975, as defined in Section 313.4(a)(1) of the Department’s regulations.

17. **Start-up of Proposed Operations.** Avior intends to commence service to the United States on January 15, 2001. In order to provide sufficient lead-time to market its U.S. services in advance of the start-up date, Avior requests that the Department grant this application by January 12, 2001. Avior will serve this application by fax on all U.S. carriers holding certificate authority to serve Venezuela and all other interested parties. It will poll those parties to determine their position with respect to the granting of this application.

Conclusion

WHEREFORE, Avior respectfully requests that it be exempted for a one year period from the provisions of Title 49 of the United States Code and the regulations of the Department, to the extent necessary to permit Avior to engage in foreign air transportation as set forth above and that the Department grant such further, different and additional relief as the Department may deem appropriate. Avior further respectfully requests that the Department issue the requested exemption authority no later than January 12, 2001.

Respectfully submitted,

KILPATRICK STOCKTON LLP

By: _____


George R. Harper

Counsel for:
Aviones de Oriente, Avior, C.A.

January 2, 2001