

Dated: May 21, 2009.

**Paul N. Doremus,**

*NOAA NEPA Coordinator, Office of Program Planning and Integration.*

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### **Action Affecting Export Privileges; Matthew Ayadpoor In the Matter of: Matthew Ayadpoor, 9700 Mayview Court, Oklahoma City, OK, 73159; Respondent; Order Relating To Matthew Ayadpoor**

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS") has notified Matthew Ayadpoor ("Ayadpoor"), of its intention to initiate an administrative proceeding against Ayadpoor pursuant to Section 766.3 of the Export Administration Regulations (the "Regulations"),<sup>1</sup> and Section 13(c) of the Export Administration Act of 1979, as amended (the "Act"),<sup>2</sup> through the issuance of a proposed charging letter to Ayadpoor that alleged that he committed four violations of the Regulations. Specifically, these charges are:

#### **Charge 1 15 CFR 764.2(c)—Solicitation and Attempt**

On or about June 2, 2004, Ayadpoor engaged in conduct prohibited by the Regulations by attempting to have piston-type differential pressure gauges, which is subject to the Regulations and classified as EAR99, exported to Iran without the required U.S. Government authorization. Specifically, Ayadpoor ordered a freight forwarding company to export the gauges to Iran via the United Arab Emirates ("UAE"). Pursuant to Section 560.204 of the Iranian Transactions Regulations maintained by the Department of the Treasury's Office of Foreign Assets Control ("OFAC"), an export to a third country intended for transshipment to Iran is a transaction

<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730-774 (2009). The violations alleged occurred 2004. The Regulations governing the allegation at issue are found in the 2004 version of the Code of Federal Regulations (15 CFR Parts 730-774 (2004)). The 2009 Regulations govern the procedural aspects of the case.

<sup>2</sup> 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of July 23, 2008 (73 FR 43603 (July 25, 2008)), continues the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)).

that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the Iranian Transactions Regulations without authorization from OFAC. No OFAC authorization was obtained for the export described herein. In engaging in the activity described herein, Ayadpoor committed one violation of Section 764.2(c) of the Regulations.

#### **Charge 2 15 CFR 764.2(e)—Acting with Knowledge of a Violation**

In connection with charge one above, on or about June 4, 2004, Ayadpoor violated the Regulations by ordering the export of items subject to the Regulations from the United States with knowledge that a violation of the Regulations would occur in connection with the item. Specifically, Ayadpoor attempted to export items subject to the Regulations and the Iranian Transactions Regulations, with knowledge or reason to know that the items would be exported to Iran via the UAE without the required U.S. Government authorization. Ayadpoor had knowledge that U.S. products could not be sold to sanctioned countries, including Iran, a fact he acknowledged to Office of Export Enforcement ("OEE") special agents. Additionally, Ayadpoor negotiated for the items with persons in Iran, knowing that the items would be shipped there via the UAE. In so doing, Ayadpoor committed one violation of Section 764.2(e) of the Regulations.

#### **Charge 3 15 CFR 764.2(g)—Misrepresentation and Concealment of Facts**

On or about September 8, 2004, Ayadpoor made a false and/or misleading statement to OEE special agents in the course of an investigation subject to the Regulations. Specifically, Ayadpoor told the agents that he had not participated in any export transactions with the UAE company associated with the June 2004 transaction since that transaction. This was a false statement in that on or about August 31, 2004, Ayadpoor ordered that a second shipment of gauges be exported to the same UAE company. In so doing, Ayadpoor committed one violation of Section 764.2(g) of the Regulations.

#### **Charge 4 15 CFR 764.2(i)—Failure To Comply With Recordkeeping Requirements**

On or about September 8, 2004, Ayadpoor failed to comply with the recordkeeping requirements set forth in Section 762.2 of the Regulations.

Specifically, Ayadpoor failed to retain export control documents, including waybills, and/or other pertinent documents in connection with its export of gauges, described in Charge 3, above. In so doing, Ayadpoor committed one violation of Section 764.2(i) of the Regulations.

Whereas, BIS and Ayadpoor have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and

Whereas, I have approved of the terms of such Settlement Agreement; *It is therefore ordered:*

*First*, Ayadpoor shall be assessed a civil penalty in the amount of \$25,000, the payment of which shall be suspended for a period of one (1) year from the date of entry of the Order, and thereafter shall be waived, provided that during the period of suspension, Ayadpoor has committed no violation of the Act, or any regulation, order, or license issued thereunder.

*Second*, that for a period of one (1) year from the date of entry of the Order, Ayadpoor, his representatives, assigns or agents ("Denied Person") may not participate, directly or indirectly, 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 Regulations, or in any other activity subject to the Regulations, 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 Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

*Third*, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership,

possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the 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 the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations 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 Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Fourth*, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Ayadpoor 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.

*Fifth*, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

*Sixth*, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 15th day of May, 2009.

**Kevin Delli-Colli,**

*Acting Assistant Secretary of Commerce for Export Enforcement.*

[FR Doc. E9-12190 Filed 5-22-09; 8:45 am]

**BILLING CODE 3510-DT-P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### Action Affection Export Privileges: Orion Air S.L.; Syrian Pearl Airlines

In the Matter of:

Orion Air, S.L., Canada Real de Merinas, 7 Edificio 5, 3'A, Eisenhower Business Center, 28042 Madrid, Spain.

Ad. de las Cortes Valencianas no 37, Esc.A Puerta 45 46015 Valencia, Spain.

Syrian Pearl Airlines, Damascus International Airport, Damascus, Syria. Respondents.

#### Order Temporarily Denying Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations ("EAR"),<sup>1</sup> the Bureau of Industry and Security ("BIS"), U.S. Department of Commerce, through its Office of Export Enforcement ("OEE"), has requested that I issue an Order temporarily denying, for a period of 180 days, the export privileges under the EAR of:

1. Orion Air, S.L., Canada Real de Merinas, 7 Edificio 5, 3'A, Eisenhower Business Center, 28042 Madrid, Spain and Ad. de las Cortes Valencianas no 37, Esc.A Puerta 45 46015 Valencia, Spain.
2. Syrian Pearl Airlines, Damascus International Airport, Damascus, Syria.

BIS has presented evidence that on or about May 1, 2009, Orion Air re-exported a BAE 146-300 aircraft (tail number EC-JVO) to Syria and specifically to Syrian Pearl Airways without the U.S. Government authorization required by General Order No. 2 of Supplement 1 to Part 736 of the EAR. This re-export took place after Orion Air had been directly informed of the export licensing requirements by the U.S. Government, and thus had actual as well as constructive notice of those licensing requirements, and occurred despite assurances made by Orion Air that it would put the transaction on hold based on the U.S. Government's concerns.

The aircraft is powered with four U.S.-origin engines and also contains a U.S.-origin auxiliary power unit ("APU") and electronic flight instrumentation system ("EFIS"), all of which are items subject to the EAR. The engines and APU are classified as Export Control Classification Number ("ECCN") 9A991.d and the EFIS is classified as ECCN 7A994. Because the aircraft contains greater than a 10 percent *de minimis* of U.S.-origin items, a fact Orion Air acknowledged, the aircraft is also subject to the EAR if re-exported to Syria and is classified as ECCN 9A991.b. No license was obtained from BIS

<sup>1</sup>The EAR is currently codified at 15 CFR Parts 730-774 (2009). The EAR are issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420 (2000)) ("EAA"). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive presidential notices, the most recent being that of July 23, 2008 (73 FR 43603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)) ("IEEPA").

for export or re-export of the U.S.-origin parts contained in the aircraft, nor the aircraft itself. BIS has also produced evidence that the re-exported aircraft bears the livery, colors and logos of Syrian Pearl Airlines, a national of Syria, a country group E:1 destination.

Moreover, BIS argues that future violations of the EAR are imminent based on statements by Orion Air to the U.S. Government that Orion Air plans to re-export an additional BAE 146-300 aircraft, currently located in Spain, to Syria and specifically to Syrian Pearl Airlines. This information is corroborated by publically available information in the Syrian press and contained in industry data bases. Based on this evidence, including Orion's recent re-export to Syria in violation of the EAR, it is highly likely that this additional aircraft will be re-exported to Syria contrary to U.S. export control laws.

I find that the evidence presented by BIS demonstrates that a violation of the Regulations is imminent in both time and degree of likelihood. The conduct in this case is deliberate, significant and likely to occur again absent the issuance of a TDO. As such, a TDO is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with the Respondents in export transactions involving items subject to the EAR. Such a TDO is consistent with the public interest to preclude future violations of the EAR.

Accordingly, I find that a TDO naming Orion Air and Syrian Pearl Airlines is necessary, in the public interest, to prevent an imminent violation of the EAR.

This Order is being issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation.

#### *It Is Therefore Ordered:*

*First*, that, Orion Air, S.L., Canada Real de Merinas, 7 Edificio 5, 3'A, Eisenhower Business Center, 28042 Madrid, Spain, and Ad. de las Cortes Valencianas no 37, Esc.A Puerta 4546015 Valencia, Spain; and Syrian Pearl Airlines, Damascus International Airport, Damascus, Syria. (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.