TOMMY CANTRELL
ADMINISTRATIVE LAW JUDGE
UNITED STATES COAST GUARD

Certificate of Service

I hereby certify that I have served by electronic mail the foregoing Recommended Decision to Dismiss Appeal upon the following:

Gregory Michelsen, Esq., Andrea Duvall, Esq., Attorneys for Bureau of Industry and Security, Office of Chief Counsel for Industry and Security, U.S. Department of Commerce (*Sent via electronic mail*)

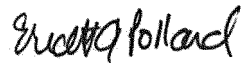
Wendy Wysong, Esq., Ali Burney, Esq., Steptoe & Johnson HK LLP, Attorneys for Respondent (*Sent via electronic mail*)

U.S. Coast Guard, ALJ Docketing Center, Attn: Hearing Docket Clerk (*Sent via electronic mail*)

I hereby certify that I have forwarded by Express Courier the foregoing Recommended Decision to Dismiss Appeal *and* the case file upon the following:

Alan F. Estevez, Under Secretary for Industry and Security, Bureau of Industry and Security, U.S. Department of Commerce (*Sent via Fed Ex*)

Done and dated August 24, 2023, at Galveston, Texas.



Ericka J. Pollard
Paralegal Specialist to
Tommy Cantrell
Administrative Law Judge
United States Coast Guard

[FR Doc. 2023–22434 Filed 10–10–23; 8:45 am]
BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket Number: 23–BIS–TDO–1]

In the Matter of: OOO Pegas Touristik, 5 Building 1, Volokoplamsk Highway, Moscow, Russian Federation, 125080, Appellant; Final Decision and Order

Before me for my final decision is a Recommended Decision (RD), issued on August 23, 2023, by Administrative Law Judge (ALJ) Tommy Cantrell. The RD recommends that this appeal filed by OOO Pegas Touristik (Pegas) be dismissed. As further discussed below, I accept the findings of fact and conclusions of law in the ALJ's RD.

I. Background

Pegas appeals a Temporary Denial Order (TDO) temporarily denying the export privileges of Nordwind Airlines (Nordwind), first issued by the Assistant Secretary of Commerce for Export Enforcement (Assistant Secretary) of the Bureau of Industry and Security (BIS or the Agency) on June 24, 2022, 87 FR 38704. The Export Administration Regulations (EAR or Regulations) at 15 CFR 766.24 authorize the Assistant Secretary to issue a TDO for a period of up to 180 days to prevent an ''imminent violation'' of the Regulations. 15 CFR 766.24(b)(1), (b)(4). Moreover, a TDO may be made applicable to ''related persons'' in accordance with § 766.23 of the Regulations.

The Agency subsequently renewed the TDO against Nordwind twice, on December 20, 2022, 87 FR 79725, and June 15, 2023, 88 FR 40202. Upon the second renewal, the Agency added Pegas as a related person to the TDO, then modified the TDO on June 27, 2023, to remove Pegas as a related person, 88 FR 42290.

On August 4, 2023, Pegas, through counsel, filed an appeal (Pegas Appeal) with the U.S. Coast Guard ALJ Docketing Center (Docketing Center) pursuant to 15 CFR 766.23(c) of the EAR. After assignment of the matter to an ALJ by the Docketing Center on August 10, 2023, BIS filed a response to the appeal on August 17, 2023. ALJ Cantrell issued the August 23, 2023, RD, which my office received on August 24, 2023. On August 24, 2023, Pegas requested a hearing and/or opportunity to respond to the ALJ's RD. Upon consideration of the views of the parties, I issued an order on August 29, 2023, denying Pegas's request for a hearing and granting its request to submit a response. The order also extended the period of time to issue this Final Decision and set forth a schedule for additional written submissions by the parties. Consistent with the order, Pegas filed a ''Response to the Administrative Law Judge's Recommended Decision'' (Pegas Response) on September 6, 2023, and the Agency filed a ''Reply to Response by Non-Party OOO Pegas Touristik'' (BIS Reply) on September 15, 2023.

II. Standard

As described above, § 766.24(b) of the Regulations addresses the Assistant Secretary's authority to issue TDOs. To issue a TDO, BIS must make a showing that the order is necessary in the public interest to prevent an ''imminent

violation'' of the Regulations. 15 CFR 766.24(b)(1). The Regulations authorize the issuance of a TDO on an *ex parte* basis but require that the order define the imminent violation and state why it was issued without a hearing. *Id.* at § 766.24(b)(2). BIS also has the authority to renew the TDO for additional periods. *Id.* at § 766.24(d)(1).

To prevent evasion of the TDO, the Assistant Secretary may apply the terms of the TDO to ''related persons,'' that is, ''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.'' *Id.* at § 766.23(a). When seeking to add a related person to a denial order, ''BIS shall, except in an *ex parte* proceeding under § 766.24(a) of this part,'' give that person notice and an opportunity to oppose such an action. *Id.* at § 766.23(b).

''Related persons'' may not oppose the issuance or renewal of a TDO, but may file an appeal with an ALJ, who issues an RD for the review of the Under Secretary in accordance with § 766.24(e) of the Regulations. *See id.* at §§ 766.23(c)(2)(ii), 766.24(d)(3)(ii). For appeals by related persons, the Regulations provide that the ''sole issues to be raised and ruled on in any such appeal are whether the person so named is related to the respondent and whether the order is justified in order to prevent evasion.'' *Id.* at § 766.23(c).

III. Discussion

Pegas's appeal requests that an Order be issued ''that orders the Assistant Secretary to issue an amended Order that retroactively nullifies and voids the addition of Pegas Touristik as a related person to the TDO and the subjection of Pegas Touristik to a denial order from June 15, 2023, to June 27, 2023.'' Pegas Appeal at 11. Pegas also seeks a public acknowledgement from BIS that its designation of Pegas as a related person to the TDO and the addition of Pegas to the BIS Denied Persons List was in error. Pegas Appeal at 10, Pegas Response at 8. In short, the limited scope of the appeal under § 766.23(c) of the Regulations prevents me from doing as Pegas requests.

The ALJ makes twelve recommended findings of fact in the RD. RD at 2–3. I accept these recommended findings of fact. Three of the Recommended Facts (2, 9, and 10) were discussed in the additional submissions by the parties, and warrant additional discussion. In its response to the RD, Pegas describes these three Recommended Facts as ''materially incomplete and/or misleading,'' but concedes that Recommended Facts 9 and 10 are indeed factually accurate. Pegas Response at 6–7. Because both parties agree on accuracy, *see id.,* BIS Reply at 2, I decline to disturb the ALJ's fact determinations and accept Recommended Facts 9 and 10 as set forth in the RD. Regarding Recommended Fact 2, Pegas argues that this fact should be ''clarified'' to reflect additional information about alleged deficiencies in the TDO renewal process, but does not explicitly contest its accuracy. Pegas Response at 6. I am unpersuaded by Pegas's contention that Recommended Fact 2 as submitted by the ALJ is insufficient, and think the clarification requested by Pegas is not necessary for the disposition of this § 766.23(c) appeal. Thus I accept Recommended Fact 2 as set forth in the RD.

Regarding the conclusion of law in the RD, I agree that Pegas seeks relief outside the scope of an appeal as set forth in 15 CFR 766.23(c). As discussed above, the Regulations limit the scope of the appeal to two issues: whether the related person is related to the respondent subject to the TDO, and whether the TDO is justified to prevent evasion. 15 CFR 766.23(c). Although Pegas takes issue in its appeal with the process by which it was added as a related person to the Nordwind TDO on June 15, 2023, Pegas's appeal does not address in detail whether it is indeed related to Nordwind, nor does it address whether the TDO was justified to prevent evasion. Regardless, as of June 27, 2023, Pegas was no longer a related person under § 766.23 to the Nordwind TDO, and therefore an appeal under § 766.23(c) is no longer available to Pegas. The ALJ concludes that he ''cannot rule on these issues because there is no TDO currently in effect naming Pegas as a related person, thus, [he] cannot affirm, modify, or vacate as part of this appeal,'' RD at 5, and I agree.

IV. Conclusion and Order

Based on my review of the record, I accept the findings of fact and conclusions of law made by the ALJ in his RD. I also confirm that as of the date of issuance of this Final Decision and Order, Pegas is not listed on the BIS Denied Persons List, nor is it subject to the license requirements and prohibitions in the Nordwind TDO. Accordingly, it is therefore *ordered:*

First, that this appeal is *dismissed.*

Second, that this Final Decision and Order shall be served on Appellants and on BIS and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision shall also be published in the **Federal Register**.

This Order, which constitutes the Department's final decision with regard to this appeal, is effective immediately.

Dated: September 29, 2023.

Alan F. Estevez,

Under Secretary of Commerce for Industry and Security.

UNITED STATES DEPARTMENT OF COMMERCE, BUREAU OF INDUSTRY AND SECURITY, WASHINGTON, DC 20230

In the matter of: OOO Pegas Touristik, Appellant.

Docket No.: 23–BIS–TDO1

RECOMMENDED DECISION

Issued by: Honorable Tommy Cantrell, Administrative Law Judge

Issued: August 23, 2023

On August 4, 2023, OOO Pegas Touristik (Pegas) filed an appeal pursuant to 15 CFR 766.23(c) of the Export Administration Regulations (EAR). Specifically, Pegas requests I issue an order directing the Assistant Secretary of Commerce for Export Enforcement (Assistant Secretary) to ''issue an amended Order that retroactively nullifies and voids the addition of Pegas as a related person'' to a Temporary Denial Order (TDO) issued to Nordwind Airlines (Nordwind), ''as well as Pegas Touristik's inclusion in the [Denied Persons List] order from June 15, 2023, to June 27, 2023.'' (Appeal at 3). The Bureau of Industry and Security (BIS) opposes the appeal, arguing there is no factual or legal basis to support the appeal or the relief Pegas seeks. For the reasons set forth herein, I recommend the appeal be *dismissed.*

I. Procedural Background

On June 24, 2022, the Assistant Secretary issued a TDO to Russian airline Nordwind pursuant to 15 CFR 766.24. (Ex. 1).[1] In accordance with BIS regulations, the Assistant Secretary renewed the TDO for an additional 180 days on December 20, 2022. (Ex. 2). The Assistant Secretary again renewed the TDO on June 15, 2023, this time adding Pegas as a related person pursuant to 15 CFR 766.23 of the EAR. (Ex. 3).[2] Thereafter, following discussions and an exchange of information between BIS and Pegas, the Assistant Secretary issued a ''Modification of June 15, 2023 Renewal of Temporary Denial Order,''

[1] ''Ex. 1'' references the first of 12 exhibits attached to the Appeal dated August 4, 2023.

[2] BIS published this TDO on the **Federal Register** on June 21, 2023. *See* 88 FR 40202.

removing Pegas from the Nordwind TDO. (Exs. 3–7).[3]

On August 4, 2023, Pegas filed this appeal with the United States Coast Guard Administrative Law Judge Docketing Center (Docketing Center).[4] The appeal letter included twelve exhibits. On August 10, 2023, the Docketing Center assigned this case to me for adjudication. BIS submitted its response to the appeal on August 17, 2023. The record is now closed and the appeal is ripe for decision.

II. Recommended Findings of Fact

1. On June 24, 2022, the Assistant Secretary issued a Temporary Denial Order (TDO) to Russian airline Nordwind Airlines (Norwind), temporarily denying Nordwind's export privileges on an *ex parte* basis pursuant to 15 CFR 766.24 to prevent an ''imminent violation'' of the Export Administration Regulations (EAR). (Ex. 1).

2. On June 15, 2023, the Assistant Secretary renewed the TDO and added Pegas as a related person. (Ex. 3).

3. As modified, the June 15, 2023, TDO refers to both Nordwind Airlines and Pegas as ''Denied Persons'' who ''may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology . . . exported or to be exported from the United States that is subject to the EAR . . . .'' [5] (Ex. 3).

4. BIS published the June 15, 2023 TDO in the **Federal Register** on June 21, 2023. *See* 88 FR 40202.

5. On June 20, 2023, Pegas contacted BIS to express concerns about the TDO, specifically arguing the addition of Pegas as a related person was legally and factually incorrect because BIS did not provide Pegas with advance notice or an opportunity to oppose the action. (Ex. 4).

6. On June 21, 2023, the Office of Export Enforcement (OEE) requested information from Pegas regarding its business operations, ownership and corporate structure, and other facts related to certain individuals, including information regarding whether Pegas was related to Nordwind Airlines. (Ex. 5).

7. Following discussions between Pegas and BIS, on June 27, 2023, the Assistant Secretary issued a modified TDO removing Pegas as a related person. (Exs. 6a, 6b, 7).

8. BIS published the June 27, 2023, TDO in the **Federal Register** on June 30, 2023. *See* 88 FR 42290.

9. The modified TDO does not discuss specific reasons for the removal but states the OEE requested ''Pegas Touristik be removed from the TDO to allow the opportunity for additional administrative process under Part 766 of the Regulations.'' (Ex. 7).

10. On July 24, 2023, BIS corrected the Table of Contents for Export Violations on its website to indicate the June 15, 2023, TDO related solely to Nordwind Airlines. (Ex. 11).

11. On July 28, 2023, Pegas requested the Assistant Secretary issue an order which clearly and definitively states ''Pegas Touristik was erroneously added as a related person to the June 15 Order and to the List of Denied Persons'' and ''Pegas Touristik has never been subject to a valid denial order imposed by the U.S. Department of Commerce's Bureau of Industry and Security.'' (Ex. 10).

12. In response, BIS sent Pegas an email noting the following: ''BIS issued an Order on June 27, 2023, removing Pegas Touristik as a party from the June 15, 2023 Nordwind TDO. Additionally, on July 24, 2023, BIS amended the caption in its EFOIA Table of Contents. Given the above, no further action is necessary.'' (Ex. 11).

III. Opinion and Recommended Conclusion of Law

BIS regulations related to export administration are issued ''under laws relating to the control of certain exports, reexports, and activities.'' 15 CFR 730.1.[6] Its export control provisions ''are intended to serve the national security, foreign policy, nonproliferation of weapons of mass destruction, and other interests of the United States.'' 15 CFR 730.6. To prevent an imminent violation of the EAR, BIS may request the Assistant Secretary issue a TDO on an *ex parte* basis. 15 CFR 766.24(a). The TDO is only valid for 180 days, but the Assistant Secretary may renew it in additional 180-day increments as deemed necessary. 15 CFR 766.24(b)(4), 766.24(d)(4). When deciding to renew an order, the only issue to be considered ''is whether the temporary denial order should be continued to prevent an imminent violation.'' 15 CFR 766.24(d)(3). The Assistant Secretary may also modify or amend a TDO. 15 CFR 766.24(d), 766.23(b).

To prevent evasion of a TDO, the Assistant Secretary may apply the order ''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.'' 15 CFR 766.23(a), 766.24(c). When adding a related party to an order affecting export privileges, ''BIS shall, except in an *ex parte* proceeding under § 766.24'' give that person notice and an opportunity to oppose the action. 15 CFR 766.23(b).

Where the Assistant Secretary issues or renews a TDO on an *ex parte* basis pursuant to 15 CFR 766.24, persons ''designated as a related person may not oppose the issuance or renewal of the temporary denial order, but may file an appeal in accordance with § 766.23(c).'' 15 CFR 766.24(d)(3)(ii). The *only* issues that may be raised on appeal are ''whether the person so named is related to the respondent and whether the order is justified in order to prevent evasion.'' 15 CFR 766.23(c). An administrative law judge then submits a recommended decision to the Under Secretary for Industry and Security ''recommending whether the issuance or the renewal of the temporary denial order should be affirmed, modified, or vacated.'' 15 CFR 766.24(e)(4).

Having outlined the relevant regulations governing this appeal, I now turn to the facts of the case.

a. Pegas Seeks Relief Outside the Scope of an Appeal as Set Forth in 15 CFR 766.23(c)

Here, the issues that may be raised and ruled upon in an appeal under 15 CFR 766.23(c) are (1) whether Pegas is related to Nordwind Airlines, and (2) whether the order naming Pegas as a related person is justified to prevent evasion of the Nordwind TDO. 15 CFR 766.23(c). Pegas does not argue either of these issues.[7] Ultimately, I cannot rule on these issues because there is no TDO currently in effect naming Pegas as a related person, thus, I cannot affirm, modify, or vacate as part of this appeal.

[3] BIS published this TDO on the **Federal Register** on June 30, 2023. *See* 88 FR 42290.

[4] Pursuant to an interagency agreement, United States Coast Guard (USCG) Administrative Law Judges are permitted to adjudicate BIS cases.

[5] The TDO refers to Pegas as a ''Denied Person'' but the record does not contain a separate ''Denied Persons List'' or ''DPL.'' For purposes of this decision, I consider the naming of Pegas as a related person the same as its inclusion on a DPL.

[6] The EAR primarily relate to the implementation of the Export Administration Act of 1979. 15 CFR 730.2.

[7] At the crux of Pegas's appeal is the argument BIS acted outside its regulations when it named the company a related party without first giving it notice and an opportunity to oppose the action. It asserts this allegedly *ultra vires* activity should render the June 15, 2023, TDO null and void. I note, however, the Assistant Secretary issued and renewed the Nordwind TDO on an *ex parte* basis pursuant to 15 CFR 766.24. Specifically, the June 15, 2023, TDO which added Pegas as a related party was also issued *ex parte* in accordance with 15 CFR 766.24. As such, as a related party Pegas could not oppose its issuance or renewal but could file an appeal pursuant to § 766.23(c). 15 CFR 766.24(d)(3)(ii); 15 CFR 766.23(b).

15 CFR 766.24(e)(4). The Assistant Secretary removed Pegas from the Nordwind TDO on June 27, 2023. (Ex. 7). According to Pegas, BIS also removed it from its list of ''Denied Persons.'' (Ex. 9). The latest version of the Nordwind TDO is not called into question and remains in effect regarding Nordwind Airlines—not Pegas—until December 12, 2023.

While I understand Pegas's business concerns, the regulations do not grant me authority to issue an order retroactively nullifying the addition of Pegas as a related party in the June 15, 2023, TDO. In light of the above, I recommend this appeal be dismissed.

Done and dated this 23rd day of August 2023, at Galveston, Texas.

TOMMY CANTRELL
ADMINISTRATIVE LAW JUDGE
UNITED STATES COAST GUARD

Certificate of Service

I hereby certify that I have served by electronic mail the foregoing Recommended Decision upon the following:

Gregory Michelsen, Esq., Andrea Duvall, Esq., Attorneys for Bureau of Industry and Security, Office of Chief Counsel for Industry and Security, U.S. Department of Commerce (*Sent via electronic mail*)

Melissa B. Mannino, Esq., Lana Muranovic, Esq., Orga Cadet, Esq., BAKER & HOSTETLER LLP, Attorneys for Respondent (*Sent via electronic mail*)

U.S. Coast Guard, ALJ Docketing Center, Attn: Hearing Docket Clerk (*Sent via electronic mail*)

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Alan F. Estevez, Under Secretary for Industry and Security, Bureau of Industry and Security, U.S. Department of Commerce (*Sent via Fed Ex*)

Done and dated August 23, 2023, at Galveston, Texas

Ericka J. Pollard
Paralegal Specialist to
Tommy Cantrell
Administrative Law Judge
United States Coast Guard

[FR Doc. 2023–22433 Filed 10–10–23; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF EDUCATION

Presidential Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans; Meeting

AGENCY: White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans, Office of the Secretary, U.S. Department of Education.

ACTION: Announcement of an open meeting.

SUMMARY: This notice sets forth the agenda for the October 26–27, 2023, meeting of the Presidential Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans (PAC) and provides information to members of the public about how to submit written comments before the meeting. Notice of the meeting is required and is intended to notify the public of its opportunity to attend.

DATES: The PAC will be meeting on October 26 and 27, 2023, from 10 a.m. to 5 p.m. E.D.T.

ADDRESSES: The October 26, 2023, meeting will be held at the White House. The October 27, 2023, meeting will be in the Barnard Auditorium at the U.S. Department of Education, located at 400 Maryland Avenue SW, Washington, DC 20202. The public may join both meetings virtually.

FOR FURTHER INFORMATION CONTACT: Monique Toussaint, Designated Federal Official, U.S. Department of Education, White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: (202) 260–0964. Email: *monique.toussaint@ed.gov.*

SUPPLEMENTARY INFORMATION:

PAC's Statutory Authority and Function: The PAC is established by Executive Order 14050 (October 19, 2021). The PAC is governed by the provisions of 5 U.S.C. Chapter 10 (Federal Advisory Committees), which sets forth standards for the formation and use of advisory committees. The purpose of the PAC is to advise the President, through the Secretary of the U.S. Department of Education, on all matters pertaining to advancing educational equity, excellence, and economic opportunity for Black Americans and communities.