



U.S. Department
of Transportation
**Federal Aviation
Administration**

Mike Monroney
Aeronautical Center

P.O. Box 25082
Oklahoma City, Oklahoma 73125

October 17, 1996

Mr. Nicolas Finazzo
Vice President
IAL Aircraft Holding, Inc.
950 S.E. 12th St.
Hialeah, FL 33010

Dear Mr. Finazzo:

Aircraft N2818W

This will discuss the status of the aircraft registration application for the subject aircraft which IAL Aircraft Holding, Inc. (IAL) submitted to the FAA Aircraft Registry on December 5, 1995.

By way of background, it appears that at all times material hereto, the aircraft has been owned by IAL. (Your Affidavit of Continuous Ownership dated December 5, 1995).

The only impediment to registration in the name of your company is that the aircraft is presently on the Brazilian register. 49 U.S.C. 44102(a)(1). (translated FAX N° 058 - copy enclosed).

14 C.F.R. 47.37 permits U.S. registration of an aircraft last previously registered in a foreign country, provided that the applicant submits evidence that foreign registration has ended or is invalid. Satisfactory evidence of termination of foreign registration may be either a statement from an official of the foreign registry that registration has ended or is invalid; or "a final judgment or decree of a court of competent jurisdiction that determines, under the law of the country concerned, that the registration has in fact become invalid." 14 C.F.R. 47.37(b)(2)

Incident thereto, the Brazil Aeronautical Registry says the aircraft "keeps its Brazilian Registration." (FAX N° 058) Therefore, IAL initiated an in rem action in Dade County Circuit Court against the aircraft [96-14893 (CA-32)] and,

on August 27, 1996, obtained a Final Judgment and Decree Determining Invalidity of Brazilian Registry (the Judgment).

The Judgment indicates, inter alia, that at all times IAL retained title to the aircraft; entered into a purchase agreement with Airvias S.A. Linhas Aereas (Airvias); the aircraft was placed on the Brazilian Register on March 2, 1994; the abovementioned purchase agreement was terminated in 1995 with Airvias disclaiming any interest in the aircraft; and the Brazilian Commission of the Civil Air Transportation Coordination approved the return of the Aircraft to IAL.

After reviewing various documents supporting the above events; reviewing your affidavit and the affidavit of Eugene Alan Rostov; and hearing testimony from Mr. Rostov, whom the court determined to be an expert in Brazilian law; Judge Jones found that "the registration of the Aircraft under the Laws of Brazil is in fact invalid," and considered, ordered, adjudged, and decreed that registration of the aircraft "has, in fact, lapsed and become invalid under the law of Brazil."

On August 28, 1996, you sent Jeff Klang of the International Affairs Staff of FAA Chief Counsel's office, a copy of the Judgment with a copy to my office.

Thereafter, you and I had a telephone conversation during which I expressed my concerns about the Judgment. That resulted in attorney Francis Anania writing me on September 10, setting forth the legal position that a Florida trial court is authorized to take judicial notice and interpret foreign law relying on experts in the law of the foreign jurisdiction.

Mr. Anania states that the Judgment is legal and proper, largely because Judge Jones relied on the expert testimony of Mr. Rostov who, as an expert in Brazilian law, concluded that "under the laws of the Federative Republic of Brazil, the registration of the subject Aircraft is invalid." (Anania letter, page 2, paragraph 2.)

What is vexing is that the aircraft is clearly still on the Brazilian Register. No Brazilian official and no Brazilian court have determined Brazilian registration invalid.

The effectiveness of your legal position (that IAL has met the legal requirements of 14 C.F.R. 47.37(b)(2)) is

diminished by failure to discuss the relevancy of the act of state doctrine. That doctrine is a cornerstone of international law, and provides that public acts of one sovereign are not reviewable in the courts of another. First National City Bank v. Banco Nacional de Cuba, 406 U.S. 759; 32 L.Ed.2d 466 (decided June 7, 1972).

"Under the [act of state] doctrine, the courts of this country will refrain from judging the validity of a foreign state's governmental acts in regard to matters within that country's borders." Grupo Protexa v. All American Marine Slip, 20 F.3d 1224 at 1236 (CA-3, 1994).

It would appear that aircraft registration made pursuant to Brazilian laws and regulations, and consistent with Chapter III of the Chicago Convention, should likely be considered an act of state. Generally, see 48 C.J.S. International Law Sections 33,34. Also, see extensive annotation at 12 A.L.R. Fed. 707, particularly beginning at 741. (Note: As seen in the Supreme Court's Banco case supra and in the 12 A.L.R. Fed. Annotation beginning at 721, even deciding that something is an act of state is not necessarily determinative of whether the doctrine applies, e.g., the Bernstein Exception.)

Arguendo, if Brazilian registration is an act of state, may a Dade County Judge declare it invalid?

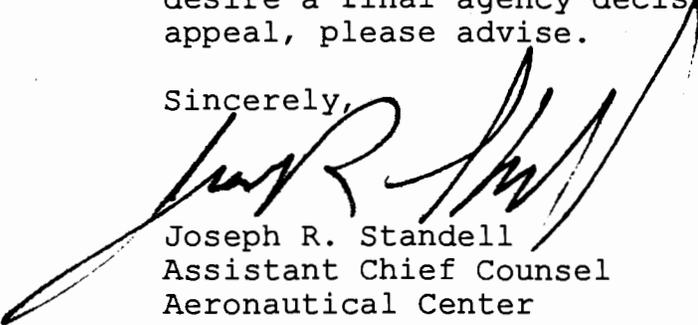
The logical follow-on question (which I am sure you are prepared to argue) is: If the Dade County Judge should not have declared aircraft registration invalid because of the act of state doctrine, is FAA nevertheless bound by the Judge's pronouncement?

I believe this matter has significant international implications. It raises not only the issue of potentially improper dual registration (Article 18 of Chicago Convention and 49 U.S.C. 44102(a)(1)), but also comity between nations. Bandes v. Harlow and Jones, Inc., 852 F.2d 661 at 666 (CA-2, 1988). In the latter regard, it seems that the United States, having the largest aircraft registry, has the most to lose if the Dade County Judge's decision is accepted as basis for registration to IAL. What then would prevent foreign courts from similarly declaring U.S. registration of aircraft invalid?

I believe we telephonically discussed the Ninth Circuit's 1996 split panel decision in Air One Helicopters, Inc. v. FAA, 86 F.3d 880. Although Air One clearly speaks to issues which are similar to IAL, I told you that the decision is on appeal by the U.S. Department of Justice. We do not presently consider the decision as precedent.

Finally, please consider this letter as inviting further discussion, and not as a final decision of the agency. However, if after consultation within your company, you desire a final agency decision so that you may pursue an appeal, please advise.

Sincerely,



Joseph R. Standell
Assistant Chief Counsel
Aeronautical Center

Enclosure

cc: (w/encl)
Bruce Carter, Esq.
Francis Anania, Esq.

FAX Nº 058

Date: 12/

Número de páginas incluindo esta folha
de rosto: 01

**TO: FAA FEDERAL AVIATION
ADMINISTRATION**

**MR. JAMES E.
HENDERSON**

**FROM: BRAZILIAN
AERONAUTICAL
REGISTRY -RAB
D.A.C.**

Telefone:

Fax: 001-405-954-3548

Telefone:

Fax: (021) 220-6877

CC:

COMENTÁRIOS: Urgente Para sua
revisão Responder
com urgência Favor comentar

DEAR MR. HENDERSON,

THIS IS TO INFORM YOU THAT BOEING 727-247, S/N 20874 IS REGISTERED ON THE BRAZILIAN AERONAUTICAL REGISTRY UNDER MARKS PP-AIV FOR BEING LEASED TO AIR VIAS S.A. LINHAS AÉREAS.

WE SHALL CLARIFY THAT, ACCORDING TO THE FILE ON THIS REGISTRY, NO COMPETENT DOCUMENTATION WAS PRESENTED IN ORDER TO LEGALLY SUPPORT THE DEREGISTRATION OF THE REFERRED AIRCRAFT WHICH, THEREFORE, KEEPS ITS BRAZILIAN REGISTRATION AND NATIONALITY IN ACCORDANCE WITH THE PROVISIONS OF THE CHICAGO CONVENTION.

PLEASE BE ADVISED THAT SUCH AIRCRAFT HAD ITS AIRWORTHINESS CERTIFICATE SUSPENDED DUE TO VIOLATION OF BRAZILIAN REGULATIONS REGARDING CONTINUING AIRWORTHINESS.

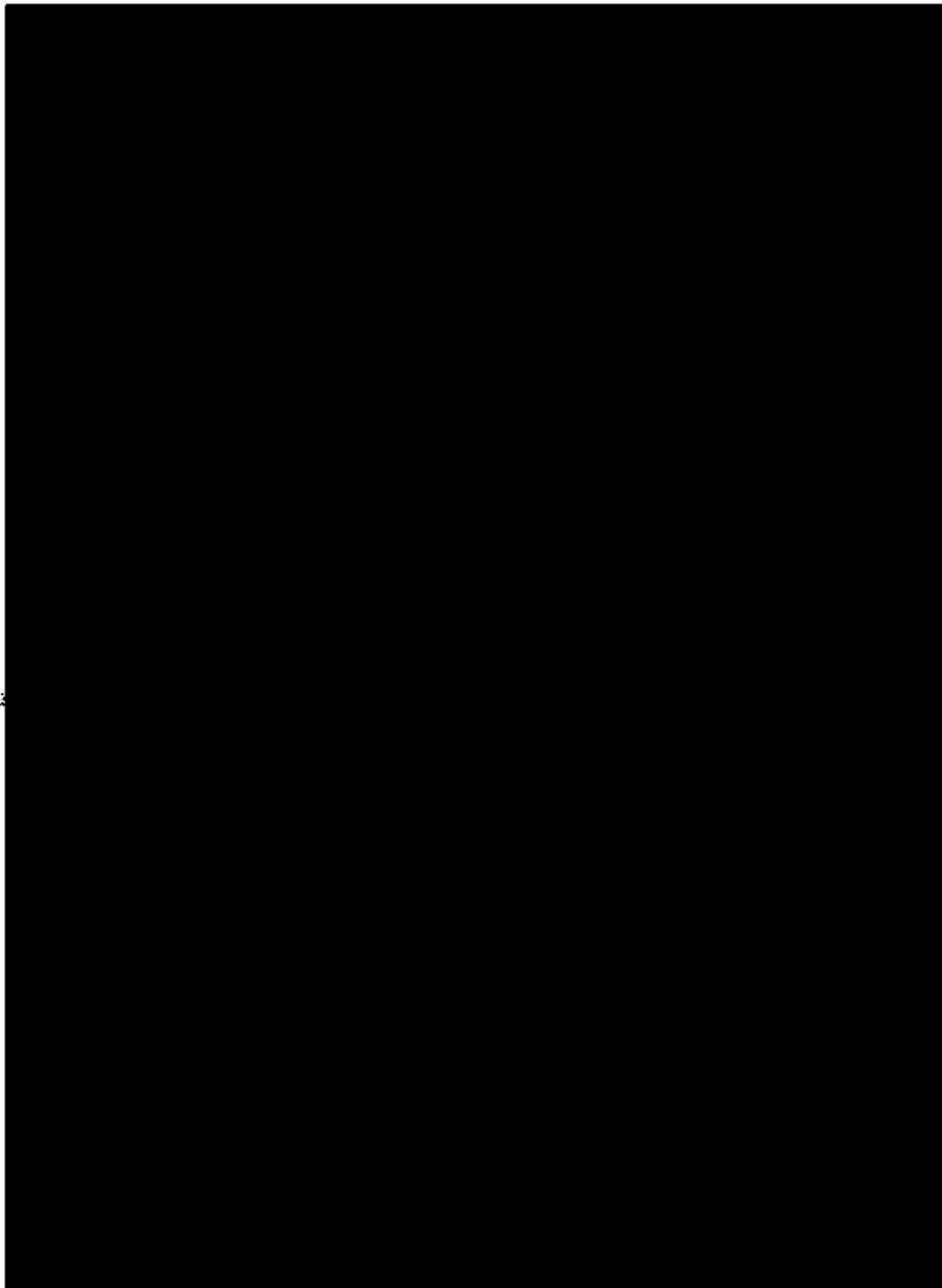
SHOULD YOU NEED ANY FURTHER INFORMATION PLEASE CONTACT US.

YOURS SINCERELY,

Brig. Do Ar. Francisco de Oliveira Netto Junior
BRIG. DO AR - FRANCISCO DE OLIVEIRA NETTO JUNIOR

BRAZILIAN AERONAUTICAL REGISTRY

SUBDEPARTAMENTO TÉCNICO





International Air Leases, Inc.

EXECUTIVE SUMMARY

ISSUE: *Inability to deregister one (1) DC8-62 aircraft, serial number 46069, Spanish registration marks EC-GEE, former United States registration N8968U ("Aircraft"), from the Spanish registry.*

DATE: September 26, 1996.

FACTUAL BACKGROUND

International Air Leases, Inc. ("IAL"), is a large, privately held jet aircraft leasing and support company owned by aviation entrepreneur and philanthropist George E. Batchelor. IAL is the owner of the above-described Aircraft.

IAL delivered the Aircraft to a Spanish air carrier, Euro Air Cargo, S.A. ("Euro Air"), pursuant to an Aircraft Lease Agreement dated April 28, 1995 ("Lease"). The Lease provided that IAL could terminate the Lease on default of payments and that Euro Air Cargo would, in case of termination, promptly return the Aircraft to Miami, Florida and promptly deregister the Aircraft from the Spanish registry. The Lease also explicitly provided that its interpretation would be governed by the statutes, laws and decisions of the State of Florida, and that the Circuit Court of the 11th Judicial Circuit, located in Dade County, Florida ("the Circuit Court") should be the proper venue over any legal actions involving the Lease, unless IAL chose otherwise. Euro Air defaulted on the Lease and the first notice of default was sent on October 4, 1995. Thereafter, Euro Air Cargo repeatedly defaulted on their countless promises to pay, after which several other default letters were sent. This led IAL to issue a termination notice dated February 5, 1996, terminating the Lease and demanding the return and deregistration of the Aircraft. Return of the Aircraft was refused, oral discussions were held and oral agreements were reached. Euro Air failed, however, to execute these agreements in writing or to comply with the agreed terms, leading IAL to issue a further and final termination notice on April 1, 1996 and to place its case before the Circuit Court on April 4, 1996.

In an effort to resolve the matter, a Joint Stipulation was filed by IAL and Euro Air Cargo before the Circuit Court on May 9, 1996, in which IAL and Euro Air agreed to terms allowing for the reinstatement of the Lease and other provisions. Euro Air once more did not live up to its obligations under this Joint Stipulation with respect to the Aircraft. IAL filed an emergency motion to enforce the Joint Stipulation demanding the return and deregistration of the Aircraft.



Executive Summary - Euro Air Cargo
September 26, 1996
Page 2

IAL's emergency motion was granted and a final declaratory judgment was entered by the court. The Lease was found to have been legally terminated and Euro Air was ordered by the court to forthwith return the Aircraft to Miami and to provide the Spanish Civil Aviation Authority with all documents necessary to effect deregistration of the Aircraft.

Euro Air did not return or deregister the Aircraft as ordered by the court, but flew it to East Midlands Airport, England and operated it from there four nights a week for DHL. The Aircraft was recently arrested at East Midlands Airport at IAL's request and is now physically under IAL's control. It cannot, however, be returned to the United States since Euro Air refuses to deregister the Aircraft from Spain.

Almost a year has passed since IAL first issued a Lease termination notice to Euro Air, but IAL still does not have the Aircraft deregistered from Spain or returned to the United States. IAL has already lost over \$3.0 Million in rental reserves and such loss continues at a rate in excess of \$240,000 per month. IAL has also lost the opportunity to sell the aircraft, which is valued at approximately \$10.0 Million.

IAL intends to file suit with the Supreme Court in Spain in order to enforce its Florida Circuit Court Final Declaratory Judgment. It is expected to take between six to nine months before the Spanish Supreme Court will issue such an order. IAL will lose approximately \$2.0 Million in rental revenues in the interim.

f:\Legal\corporate\21102009.26



International Air Leases, Inc.

EXECUTIVE SUMMARY

ISSUE: *Inability to deregister one (1) Boeing 727-247 aircraft, serial number 20874, Brazilian registration marks PP-AIV, former United States registration N2818W ("Aircraft"), from the Brazilian RAB (Registro Aeronautico Brasileiro); Circuit Court Order, 11th Judicial Circuit, Dade County, Florida, declaring Brazilian registration invalid; Registration of the Aircraft with the US FAA Aircraft Registry pursuant to FAR 47.37.*

DATE: September 26, 1996.

FACTUAL BACKGROUND

IAL Aircraft Holding, Inc. ("IAH"), is a subsidiary of International Air Leases, Inc., a large, privately held jet aircraft leasing and support company owned by aviation entrepreneur and philanthropist George E. Batchelor. IAH is the owner of the above-described Aircraft.

IAH delivered the Aircraft to a Brazilian air carrier, Airvias S.A. Linhas Aereas ("Airvias"), pursuant to an Aircraft Purchase Agreement dated November 26, 1993. Title to the Aircraft was to remain in IAH's name until such time as Airvias paid the full purchase price, after which a Bill of Sale was to be issued from IAH to Airvias thereby transferring title to Airvias. Airvias made some payments against the Aircraft Purchase Agreement, however, after Airvias became seriously delinquent in its payment obligations (Airvias owed IAH in excess of US\$2 million), IAH placed Airvias in default and on October 15, 1995 had the Aircraft arrested by judicial process in Aruba. Shortly after the arrest in Aruba, IAH and Airvias entered into a Termination and Settlement Agreement under which possession of the Aircraft was returned to IAH, mutual releases were executed by the parties, and Airvias disclaimed any further right, title or interest in the Aircraft. The Aircraft was then flown by properly qualified Brazilian crews to IAH's home base in Miami, Florida, where it has remained grounded ever since.

IAH retained the international law firm of Baker & McKenzie to process the deregistration of the Aircraft with the Brazilian RAB. After complying with all of the bureaucratic requests for documentation from relevant Brazilian governmental agencies, IAH was advised that unless an Export License is obtained by IAH, the Brazilian registration marks would not be canceled. IAH's Brazilian lawyers have advised that the Brazilian DAC's (Departamento De Aviacao Civil) request for an Export License is *discretionary* and not a legal requirement to effect deregistration of the Aircraft. IAH was further advised that Brazilian Customs will not issue the Export License unless the Aircraft returns to Brazil and is available for inspection by a



Executive Summary - Airvias, S.A.
September 26, 1996
Page 2

Brazilian Customs Inspector. It is both logistically and economically unfeasible to fly the Aircraft from Miami, Florida back to Brazil. IAH cannot comprehend why the Brazilian DAC has refused to authorize the Brazilian RAB to cancel the Brazilian registration marks under these circumstances. The better part of a year has passed since IAH first began the process of deregistering the Aircraft from Brazil, without success.

Frustrated with the bureaucratic morass within Brazil, IAH filed a lawsuit in the Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida, in order to obtain a judicial determination that the registration of the Aircraft in Brazil had de facto become invalid under the circumstances. As a result of such lawsuit, on August 27, 1996 IAH obtained a Final Judgment And Decree Determining Invalidity Of Brazilian Registration. Thereafter, in support of IAH's Application For Registration of the Aircraft with the US FAA Aircraft Registry, IAH sent certified copies of such Final Judgment to both the US FAA Aircraft Registry and its legal counsel. IAH's contention is that with the Final Judgment, the US FAA Aircraft Registry must register the Aircraft as provided by FAR section 47.37 which states, in relevant parts, the following:

"AIRCRAFT LAST REGISTERED IN A FOREIGN COUNTRY. (a) A person who is the owner of an aircraft last previously registered under the law of a foreign country may register it under this part if he -- . . . (3) Submits evidence satisfactory to the Administrator that -- . . . (b)(2) A final judgment or decree of a court of competent jurisdiction determines, under the law of the country concerned, that the registration has in fact become invalid."

The FAA is considering IAH's request based on the foregoing facts but has yet to advise IAH of its decision. While the Aircraft remains unregistered in the United States, IAH continues to lose in excess of US\$100,000 per month in rental revenues.

F:\Legal\corporate\airvias\sec9.26