



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 1st day of March, 2018

Third Party Complaint of

Jonathan Parker

v.

Saudi Arabian Airlines

**Violations of 49 U.S.C. §§ 40101, 41310, 41712,
40127, 15 CFR Part 760, and the First and Fifth
Amendments to the U.S. Constitution**

Docket DOT-OST-2015-0093

Served March 1, 2018

**ORDER DISMISSING THIRD-PARTY COMPLAINT AND REQUEST TO COMMENCE
ENFORCEMENT PROCEEDINGS**

On April 28, 2015, Mr. Jonathan Parker (“Mr. Parker”) filed a third-party formal complaint under 14 CFR 302.404 against Saudi Arabian Airlines (“Saudia”) for alleged violations of 49 U.S.C. §§ 40101, 41310, 41712, 40127, 15 CFR Part 760, and the First and Fifth Amendments to the United States Constitution. Mr. Parker, who is Jewish and a citizen of the United States and Israel, alleges that Saudia has not publicly stated a definitive policy as to whether an Israeli citizen may transit through the Kingdom of Saudi Arabia or bring onboard non-Islamic religious articles. Mr. Parker also alleges that he would be subject to punishment for illegal entry into the Kingdom of Saudi Arabia if his Israeli passport were observed during a routine search of his baggage or if he were to disclose that he is an Israeli citizen unless he first obtained special permission from the Kingdom’s government prior to boarding his flight. This order dismisses Mr. Parker’s complaint on the merits for the reasons stated below.

Complaint

In his complaint,¹ Mr. Parker sets forth the following statements of facts which we have summarized below:

¹ Mr. Parker filed a Complaint on April 28, 2015. He subsequently filed a First Amended Complaint on May 3, 2015. We proceed in our review with the amended complaint as the operative pleading in this case. *See* 14 CFR 302.5.

1. Mr. Parker, an observant Jew, is a dual citizen of the United States and Israel residing in Jerusalem.
2. Saudia is owned by and is an instrumentality of the Kingdom of Saudi Arabia (the “Kingdom”). Thus, Saudia must comply with the Kingdom’s policies concerning dual U.S. and Israeli citizens and the possession of non-Islamic religious articles.
3. The Kingdom is a country that has been designated by the U.S. Department of Treasury as one that is participating in, or cooperating with, a boycott of Israel.
4. All Saudia flights from the United States transit through either Riyadh or Jeddah, Saudi Arabia, at which point passengers must change to their connecting flights. United States citizens are not required to obtain a visa to enter the Kingdom if they are making a connection and are not leaving the airport.
5. Saudia markets flights directly to U.S. citizens by selling tickets on its U.S. website and through third-party ticket agents (e.g., Expedia, Priceline) in the United States.
6. Mr. Parker inquired about purchasing a ticket on Saudia with service from New York to India, transiting through either Riyadh or Jeddah.
7. On April 12, 2015, Mr. Parker contacted Saudia’s reservations office to inquire as to whether an Israeli passport holder would be able to enter the Kingdom for transit purposes. Mr. Parker states that the representative advised him that he could fly on Saudia and would not need a transit visa as long as his layover in the Kingdom was for less than twelve (12) hours.
8. Mr. Parker, unsure whether the aforementioned representative “comprehended that he was an Israeli citizen,” called back that same day and spoke with a second representative. The second representative, after checking with a supervisor, advised Mr. Parker that Saudia could only accept him as a passenger if he received permission from the Kingdom’s Embassy in the United States to take the flight.
9. On May 1, 2015, Mr. Parker contacted Saudia’s reservations office to inquire as to whether he would be permitted to bring a Tefillin² onboard the aircraft. Mr. Parker states that a Saudia representative advised him that the Tefillin was prohibited onboard the aircraft, in accordance with the Kingdom’s law banning the display of non-Islamic religious articles.
10. Upon written inquiry to the Kingdom’s Ambassador to the United States as to whether Israeli citizens may transit through the Kingdom, Mr. Parker’s counsel received a response directing him to an exchange between the U.S. Department of Transportation (“Department”) and Saudia regarding whether an Israeli citizen may transit through the Kingdom or fly Saudia.

² Tefillin, a Jewish religious item, is a set of two black leather boxes containing scrolls of parchment inscribed with verses from the Torah. Mr. Parker’s religious beliefs require the laying of Tefillin on his arm and forehead every weekday morning.

11. Saudia has not publicly stated a definitive policy as to whether an Israeli citizen may transit through the Kingdom or bring onboard non-Islamic religious articles. Mr. Parker asserts that he would be subject to punishment for illegal entry into the Kingdom if his Israeli passport were observed during a routine search of his baggage or if he were to disclose that he is an Israeli citizen unless he first obtained special permission from the Kingdom's government prior to boarding his flight.
12. Ultimately, Mr. Parker elected not to purchase a ticket on Saudia due to concerns he may be denied transportation if his Israeli passport was uncovered during transit and/or subject to detention or other official sanction.

Count I – Violation of 49 U.S.C. § 40101(a)(1)

Mr. Parker alleges that dual U.S.-Israeli citizens may be subject to fines, detention, or other sanctions while waiting in the airport transit areas of the Riyadh or Jeddah airports for their connecting flights. Mr. Parker states that the Kingdom's government and/or Saudia must provide assurances that transit passengers from the United States will not be subject to any form of detention, harassment, coercion, or intimidation due to their Israeli citizenship while on board a Saudia flight or waiting in the Riyadh or Jeddah airport transit areas. Mr. Parker argues that if the Kingdom's government and/or Saudia are unable to provide such assurances, then the Secretary of Transportation must revoke Saudia's permit to engage in foreign air transportation pursuant to 49 U.S.C. § 41304(a).

Count II – Violation of 49 U.S.C. § 41712(a)

Mr. Parker alleges that Saudia engages in unfair practices and unfair methods of competition in air transportation, in violation of 49 U.S.C. § 41712(a),³ by offering tickets for sale in the United States without informing the public of the prohibitions imposed upon dual U.S.-Israeli citizens and Jewish passengers. Mr. Parker states that Saudia has a duty to prominently display on its U.S. website, in its marketing materials, and to inform third party ticket agents of any restrictions that apply to dual U.S.-Israeli citizens as well as any prohibition against bringing non-Islamic religious articles onboard the aircraft. Mr. Parker asserts that Saudia's failure to provide such information deprives prospective passengers of the right to decide whether they wish to fly on Saudia or transit through the Kingdom, and thus violates 49 U.S.C. § 41712(a).

Count III – Violation of 49 U.S.C. § 40127(a)

Mr. Parker argues that Saudia discriminates against dual U.S.-Israeli citizens and Jewish travelers on the grounds of race, ancestry, religion, and national origin in violation of 49 U.S.C. § 40127(a).⁴

³ 49 U.S.C. § 41712 prohibits an air carrier or foreign air carrier from engaging in unfair or deceptive practice or unfair methods of competition in air transportation or the sale of air transportation.

⁴ 49 U.S.C. § 40127 prohibits an air carrier or foreign air carrier from subjecting a person in air transportation to discrimination on the basis of race, color, national origin, religion, sex, or ancestry.

Specifically, Mr. Parker asserts that discrimination against Israeli citizens exceeds permissible citizenship discrimination and is a pretext to discrimination based on race, ancestry, religion, and national origin. Mr. Parker argues that the inseparable nature of Judaism with Israel, combined with the Kingdom's broad Israeli boycott laws, support this contention. Mr. Parker further asserts that Saudia's ban on the Tefillin constitutes religious discrimination.

Count IV – Violation of 15 CFR Part 760

Mr. Parker alleges that Saudia is required by the Israel Boycott Law⁵ to refrain from offering transportation to citizens of the State of Israel. Mr. Parker further alleges that Saudia's compliance with the Israel Boycott Law violates the U.S. anti-boycott law found in 15 CFR Part 760. Mr. Parker alleges that Saudia is subject to Part 760 because it is a "United States Person"⁶ by virtue of maintaining permanent offices in the United States. By refusing to transport Israeli citizens in accordance with the Kingdom's Israeli boycott laws, Mr. Parker asserts that Saudia is engaging in prohibited anti-boycott activities under 15 CFR Part 760.⁷ Mr. Parker further alleges that the Department, as a "United States Person", would be illegally facilitating the boycott of Israel if it were to approve the discriminatory policy of the Kingdom per 15 CFR 764.2(b)(d)⁸ and 15 CFR 760.4(a)⁹.

Count V – Violation of 49 U.S.C. § 41310(a)

Mr. Parker alleges that Saudia violated 49 U.S.C. § 41301(a)¹⁰ by subjecting him, a dual U.S.-Israeli citizen, to "unreasonable discrimination" by requiring him to obtain permission from the

⁵ Saudia Arabia is a member of the League of Arab States, an umbrella organization comprising 22 Middle Eastern and African countries and entities. The League of Arab States began engaging in a boycott of Zionist goods and services in the British controlled mandate territory of Palestine in 1945. In 1948, after the establishment of the State of Israel, the boycott was formalized against the state of Israel and broadened to include non-Israelis who maintain economic relations with Israel or who are perceived to support it. The boycott remains in effect today. See Congressional Research Service, *Arab League Boycott of Israel*, Martin A. Weiss (June 10, 2015), available at <https://fas.org/sgp/crs/mideast/RL33961.pdf>.

⁶ 15 CFR 760.1(b)(1)(iv) defines a "United States Person" as, *inter alia*, "[a]ny foreign concern's subsidiary, partnership, affiliate, branch, office, or other permanent establishment in any state of the United States"

⁷ Construing the complaint in the light most favorable to the complainant, we presume Mr. Parker is referring to 15 CFR 760.2(a)(1), which states that "[n]o United States person may: refuse, knowingly agree to refuse, require any other person to refuse, or knowingly agree to require any other person to refuse, to do business with or in a boycotted country, with any business concern organized under the laws of a boycotted country, with any national or resident of a boycotted country, or with any other person, when such refusal is pursuant to an agreement with the boycotting country, or a requirement of the boycotting country, or a request from or on behalf of the boycotting country."

⁸ Presumably, Mr. Parker means to cite to 14 CFR 760.1(b)(i) which defines agencies as a "United States Person."

⁹ 15 CFR Part 760.4(a) prohibits United States Persons from "engag[ing] in any transaction or tak[ing] any other action, either independently or through any other person, with intent to evade the [anti-boycott provisions]."

¹⁰ 49 U.S.C. § 40301(a) prohibits "[a]n air carrier or foreign air carrier [from subjecting] a person, place, port, or type of traffic in foreign air transportation to unreasonable discrimination."

Kingdom's Embassy in the U.S. to travel when U.S. citizens ordinarily are not required to obtain such permission. Mr. Parker also alleges that Saudia engages in unreasonable discrimination by treating Jewish passengers differently than Muslim passengers with respect to the possession of religious articles onboard its aircraft.

Count VI – Violation of First and Fifth Amendment

Mr. Parker asserts that an order by the Secretary of Transportation authorizing discrimination on the basis of religion or dual U.S.-Israeli citizenship would violate the First Amendment to the U.S. Constitution as well as the Due Process provisions of the Fifth Amendment.

Answer of Saudi Arabian Airways

On June 17, 2015, Saudia answered the Amended Complaint. It states that Saudia's policy is to provide safe and secure passage to all persons who choose to travel on its aircraft. Saudia states that it welcomes all passengers, regardless of passengers' faith, nationality, or ancestry, traveling with valid tickets and valid travel documentation recognized by the Kingdom. Saudia further states that it has no policy against the use of religious articles or artifacts onboard its aircraft, as long as such use is not disruptive and does not negatively affect the safety and security of other passengers or the aircraft.

In addition, Saudia states that Mr. Parker did not allege any actual injury in the complaint, and that the complaint is based entirely on speculation about hypothetical events. Saudia further asserts that the complaint does not identify any actual or pressing danger to the safety and security of air passengers. Thus, Saudia asserts that the complaint is not an appropriate use of the Department's enforcement process.

Saudia states that it, like all other airlines that transport passengers to the Kingdom, has no authority or control over what may occur after a passenger disembarks from its aircraft and enters the common area of the airport. Thus, Saudia contends that any issues that Mr. Parker alleges may arise after he disembarks from the aircraft and enters the common areas of the airport are not within the purview or control of Saudia. Furthermore, Saudia states that it has no policy prohibiting passengers from carrying religious articles or using them onboard its aircraft.

Saudia states that dual U.S.-Israeli citizens are permitted to travel with Saudia provided they use valid travel documentation recognized by the Kingdom, such as a U.S. passport. Saudia further states that it has no policy prohibiting a passenger who uses a U.S. passport as his or her travel document from also carrying an Israeli passport onboard the aircraft. Additionally, Saudia asserts that it has no policy prohibiting passengers from carrying religious articles or using them onboard its aircraft.

Saudia states that U.S. citizens do not require permission from the Embassy of Saudi Arabia to transit through Saudi Arabia.

For the foregoing reasons, Saudia denies that Mr. Parker is entitled to any relief and requests that Mr. Parker's complaint be dismissed in its entirety without further investigation or action.

Further Pleadings

On June 23, 2015, Mr. Parker moved the Department for a joint order mandating Saudia to provide a more definite answer and motion for leave to file the same.¹¹ Mr. Parker asserts that Saudia's answer is inconsistent regarding the rights and potential punishment of dual American-Israeli nationals in the Kingdom's transit areas and requires clarification. Specifically, Mr. Parker seeks clarification on how Saudia can accommodate Israeli citizens despite the provisions of the Kingdom's Israel boycott law that he asserts Saudia must follow. Lastly, Mr. Parker seeks to strike Saudia's prayer requesting dismissal of the action as he alleges it converts the answer into a motion to dismiss. Saudia responded on June 30, 2015, denying any inconsistencies in the answer and denying the answer is vague or ambiguous in any manner that would prevent Mr. Parker from preparing a reasonable response.¹²

Independent Investigation

During the course of reviewing the pleadings of the parties, the Department independently sought to verify that dual U.S.-Israeli citizens may travel on Saudia and transit through the Kingdom using valid travel documents recognized by the government of Saudi Arabia. In an anonymous telephone inquiry to a Saudia reservations agent as to whether a dual U.S.-Israeli citizen would be accepted on a Saudia flight, the agent stated it would not be an issue so long as the passenger was traveling using valid travel documents recognized by the government of Saudi Arabia. The Saudia agent also stated that the airline has no policy regarding the wearing or display of religious articles, including tefillin, and offered to connect the call with airport authorities in Saudi Arabia to verify their policies. There is nothing in the record suggesting that the carrier's policies are therefore anything other than what Saudia has stated in its sworn answers.

Decision

The Department, after carefully reviewing Mr. Parker's formal third-party complaint and the pleadings filed in the dockets by both parties, finds good cause to accept all pleadings as filed by both parties and dismisses the case, with prejudice.

In his formal third-party complaint, Mr. Parker has not offered a single instance in which he has suffered harm while traveling as an American citizen with an Israeli passport or been denied the use of his Tefillin, or any religious article, on Saudia. Moreover, Mr. Parker has not provided evidence that he has actually been denied transportation on Saudia or free passage without a visa through Saudi Arabian airports transit areas. By his own admission, Mr. Parker never attempted to purchase a ticket to fly on Saudia. Rather, every assertion of unlawful discrimination made in Mr. Parker's complaint against Saudia relies on assumptions and/or unsupported conclusions.

¹¹ Docket No. DOT-OST-2015-0093-0007.

¹² Docket No. DOT-OST-2015-0093-0008.

In light of the speculative allegations set forth by Mr. Parker, demonstrated by the facts asserted in Saudia's certified answers, Mr. Parker's complaint is not sufficient to warrant further investigation.

ACCORDINGLY, I dismiss the third-party complaint in docket DOT-OST-2015-0093 with prejudice.

This order is issued under authority of 14 CFR 302.406(a)(2) and shall be effective as the final action of the Department within 30 days after service. A copy will be served on the Complainant.

BY:

BLANE WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings

CERTIFICATE OF SERVICE

I hereby certify that I have on this ____ day of ____, 2018, caused this Dismissal Order to be sent to each of the individuals listed below and no indication was received that such transmission failed:

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