

SERVED: March 24, 1994

NTSB Order No. EA-4131

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. 800.24)
on the 24th day of March, 1994

Petition of)
ED THORNTON)
for review of the denial by) Docket CD-27
the Administrator of the)
Federal Aviation Administration)
of the issuance of a certificate.)

ORDER

On December 11, 1992, Administrative Law Judge Jerrell R. Davis issued an order granting a motion by the Administrator to dismiss the petition for review and terminate the proceeding on the ground that the Board lacks jurisdiction to review the certificate denial the petitioner seeks to challenge. The petitioner has appealed that order and the Administrator has filed a response in opposition.

The petitioner complains, first, that the Administrator has wrongly denied Equator Traders, Ltd. a Part 125 operating certificate. However, since it appears that a certificate was actually issued to that entity, the real complaint appears to involve the Administrator's decision not to approve petitioner, who is the president of Equator Traders, to be that certificate holder's director of operations. The Administrator argues here, as he did before the law judge, that questions concerning the certification of Part 125 operators and who will be permitted to participate in their management fall outside the scope of our authority, for the only certificate denials that we are explicitly empowered under the Federal Aviation Act of 1958 to review are those declining to issue or renew "airman" certificates. See Section 602(b)(1), 49 U.S.C. App. 1422.

The petitioner also complains that, with respect to his

pilot license, the Administrator wrongly denied him an "Authorization in lieu of a type certificate" under section 61.31(b)(1) of the Federal Aviation Regulations ("FAR"), 14 CFR Part 61. The Administrator did not address this issue in his filings with the law judge, he has not addressed it in his response to the petition, and the law judge's decision gives no reasons for its judgment on jurisdiction. It is therefore possible to read the law judge's ruling as only reaching the question of the Board's authority over Part 125 certificate denials.

In the opinion of the undersigned, this case should not be submitted to the Board for decision on petitioner's appeal without the benefit of the parties' views on the reviewability in a proceeding before this agency of a denial by the Administrator of an authorization under section 61.31(b)(1).

ACCORDINGLY, IT IS ORDERED THAT:

1. The parties are hereby requested to provide, within 30 days after the service date of this order, their comments, including specific references to any relevant legislative history, on the issue of the Board's jurisdiction to review the denial of authority under FAR section 61.31(b)(1).

2. Replies to the comments of the other party may be filed no later than 15 days after service of them.

Daniel D. Campbell
General Counsel