



A bold voice for transportation workers

PUT AN END TO PILOT VISA MISUSE BY U.S. AIRLINES

U.S. airlines are increasingly misusing visa programs to fill pilot positions by employing foreign nationals, displacing qualified prospective U.S. pilots, and undercutting U.S. pilot pay. Visa abuse began with regional carriers and has now spread to larger airlines, including Breeze, Frontier, and Southwest, among others. This is being done in defiance of the visa programs' statutory authorities and attendant regulatory criteria.

In 2015, market pressures began to force U.S. regional airlines to increase pilot pay rates for the first time in a decade. Pilot pay at regional airlines had declined in real value for years and was insufficient in many cases to attract and retain pilots for those airlines. Rather than complying with the market wage, airlines began seeking certifications for pilot visas to employ pilots from outside the United States. Specifically, airlines sought to use H1-B visas to employ foreign nationals and E-3 visas to employ Australian nationals.

We urge U.S. federal government agencies, including the Departments of Homeland Security, Labor and State and the U.S. Citizenship and Immigration Services (CIS), to take immediate action to ensure airlines do not misuse U.S. visa programs to undermine the U.S. pilot workforce and destabilize our national air transportation system.

Specialty Occupation

There has been an alarming increase in pilot positions certified by the Department of Labor to permit employer sponsorship of H1-B and E-3 visas for “specialty occupations.” The “specialty occupation” designation requires an occupation have a minimum of a bachelor’s degree, or its equivalent, in the particular specialty as a threshold prerequisite for employment.

Let us be clear: the typical airline pilot job does not satisfy the legal criteria for “specialty occupation.” No U.S. airline requires a bachelor’s degree or related educational requirements in a specific specialty as a prerequisite for employment. Further, the pilot profession fails to meet *any* of the four “specialty occupation” criteria set forth in regulations governing this definition. The U.S. Citizenship and Immigration Services (CIS) Administrative Appeals Office (AAO) has repeatedly determined the piloting profession does not meet that standard and, as such, isn’t a specialty occupation. To our knowledge there has never been an AAO decision to the contrary.

Exceptional Ability

U.S. airlines have also begun to pursue other hiring avenues by recruiting foreign pilots to self-petition for a U.S. EB-2 visa and seek a national interest waiver. The EB-2 is reserved for those with advanced degrees of “exceptional ability,” defined as “a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.”

Because all commercial pilots must meet the same exacting level of technical and operational proficiency necessary to achieve the required FAA certification and type rating, the “degree of expertise” possessed by the typical airline pilot is not “significantly above that ordinarily encountered” in the piloting profession. The typical foreign pilot therefore does not meet the restrictive EB-2 standard. Moreover, because the existing U.S. pilot supply is more than adequate to cover demand, it is not appropriate for the United States to grant a national interest waiver.

Pilot Shortage Myth

Some airlines are using the specter of a fictitious pilot shortage to justify the misuse of these visas. To be clear: there is no shortage of pilots. According to the Federal Aviation Administration (FAA), there is a 1.5 to 1 ratio of certified pilots relative to demand. This year the industry, buoyed by demand, is poised to certify more pilots than ever before.

The reality is that the only pilot-related constraint on the industry relates to the complicated interplay of pilot training and carrier decision during the pandemic. Airlines engaged in measures to reduce their pilot labor costs by moving many pilots down to a different seat (e.g., captain to first officer) and to different equipment (e.g., widebody to narrowbody), placing some pilots on inactive status, and furloughing others. With pilot labor operating as a seniority-based system, collectively, these decisions resulted in a massive reallocation of labor supply at U.S. airlines, with each senior pilot displacing a more junior pilot out of their seat or aircraft.

With demand returning, airlines have had to reallocate essentially all of their labor and retrain pilots as they move back up in seat and equipment (in some cases back to the equipment or seat they held prior to the pandemic). Further complicating dynamics, for pilots recalled from furloughs during the Payroll Support Programs lapse, they cannot return to the flight deck immediately. They must return to the training center or classroom after experiencing that period of downtime from the flight deck instead of going back on the line available to fly the increased flight schedules. These are not problems of pilot supply; instead, they represent business decisions and poor management that affect operational capability to this day.

This training backlog has impacted flying capacity, as carriers have *more* pilots today than in 2019 but pilot utilization (as measured in block hours) is down. Put simply there are more pilots but less ability to use them because training, not *supply*, is the constraint to the provision of flying. For example, all of the Air Line Pilots Association’s seven largest mainline all-passenger airlines have *more* pilots than in 2019 but are flying almost 10 percent fewer block hours, as airlines struggle to train pilots with an oversubscribed and fixed capacity for training throughput that is unable to efficiently resolve the backlog.

Threats to Workers

Workers here on E-3 or H-1B non-immigrant visas are ultimately dependent on their employers in order to remain in the United States. This dependence can make visa holders particularly vulnerable to retaliation for exercising their contractual and other protections or raising issues of concern.

Further, the misuse of visa programs to reduce labor costs has the potential to undermine U.S. pilots' ability to collectively bargain for appropriate compensation and work rules.

Solutions

Transportation labor urges federal government agencies to take immediate action to ensure U.S. visa programs are not misused to undermine the current and future U.S. pilot workforce. For example, DHS should adopt as precedent the prior AAO determinations that airline pilot positions are not a "specialty occupation" and provide attendant policy guidance to U.S. CIS and Department of State employees tasked with making "specialty occupation" determinations to facilitate a consistent and appropriate application of this standard going forward.

That serves the Departments' interests in fidelity to the statutory and regulatory standard, fair program administration, and reducing administrative burdens from meritless petition filings. This approach would likewise enable predictable outcomes, reduce employer uncertainty, and minimize market pressures to pursue visas by creating a level playing field among airline competitors.

Similarly, CIS should establish forward-looking guidance recognizing that typical foreign pilot applicants do not qualify either for a national interest waiver or an EB-2 visa.

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