

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 8035

IN THE MATTER OF:

Served May 27, 2004

Application of HENKA)
INTERNATIONAL, INC., Trading as) Case No. AP-2003-184
WORLDWIDE TOURS & TRAVEL, for a)
Certificate of Authority --)
Irregular Route Operations)

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. The application is unopposed.

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

Applicant proposes commencing operations with one van and one minibus. Applicant's proposed tariff contains hourly charter rates, with minimum charges.

Applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) applicant owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

Normally, such evidence would establish applicant's fitness,¹ but in this case applicant's owners have a history of regulatory violations. When a person controlling an applicant has a record of violations, or a history of controlling companies with such a record, the Commission considers the following factors in assessing the likelihood of applicant's future compliance: (1) the nature and extent

¹ In re VGA, Incorporated, No. AP-03-73, Order No. 7496 (Oct. 29, 2003).

of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether the controlling party has made sincere efforts to correct past mistakes, and (5) whether the controlling party has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.²

Applicant is controlled by Mr. Henry Y. Huang and Ms. Kah Hwee Lee. Mr. Huang and Ms. Lee previously controlled Traveland International Inc., which held Certificate No. 372³ from January 6, 1997, to August 8, 2000, when it was revoked in Order No. 5953 for willful failure to comply with the Commission's insurance requirements.⁴ The order directed Traveland to remove all markings placed on its revenue vehicles pursuant to Regulation No. 61 and file an affidavit verifying removal within thirty days. Traveland did not comply.

To address this issue, Mr. Huang has produced a copy of a court notice showing that Traveland had entered Chapter 7 bankruptcy prior to the time Certificate No. 372 was suspended. It would thus appear that Traveland had ceased operating and was in the process of liquidating its assets when Certificate No. 372 was revoked. Copies of Maryland Motor Vehicle Administration (MVA) records confirm that the registrations of three of the four vehicles listed in Traveland's 1999 annual report, filed January 19, 2000, were cancelled. As for the remaining vehicle, Mr. Huang states that it was converted to private use. It also appears that Traveland timely removed the markings from two of its vehicles but was unable to remove the markings from the other two before they were claimed by Traveland's creditors.

It is understandable that having filed for Chapter 7 bankruptcy Traveland would not renew its insurance. The revocation of a certificate of authority for failure to comply with the Commission's insurance requirements does not bar the Commission from reissuing that authority at a later date, in any event, where, as here, there is no evidence of post-suspension operations.⁵ Furthermore, we cannot say the failure to respond to Order No. 5953 was flagrant under these circumstances, and Mr. Huang has satisfactorily accounted for the disposition of Traveland's vehicles and the removal of markings from

² Id.

³ In re Traveland Int'l Inc., t/a Traveland, No. AP-96-59, Order No. 4977 (Dec. 4, 1996).

⁴ In re Traveland Int'l Inc., t/a Traveland, No. MP-00-18, Order No. 5953 (Aug. 8, 2000).

⁵ In re Jet Tours USA, Inc., No. AP-02-133, Order No. 7078 (Mar. 06, 2003). See also Order No. 7496 (certificate of authority reissued after revocation for insurance violation); In re Skyhawk Logistics, Inc., No. AP-01-100, Order No. 6503 (Jan. 29, 2002) (same).

those vehicles. We have reissued authority in the past under similar circumstances.⁶

Based on the evidence in this record, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

Given the continuity of ownership between applicant and TravelLand and the similar nature of their operations, we shall reissue Certificate No. 372 to applicant upon applicant's compliance with the conditions stated below, including that applicant serve a one-year period of probation.⁷

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 372 shall be issued to Henka International, Inc., trading as Worldwide Tours & Travel, 113 Talbott Street, Rockville, MD 20852.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 372 has been issued in accordance with the preceding paragraph.

3. That applicant is hereby directed to file the following documents within the 180-day maximum permitted in Commission Regulation No. 66: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the for-hire vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61.

4. That applicant shall be placed on probation for a period of one year commencing with the reissue of Certificate of Authority No. 372 in accordance with the terms of this order and that a willful

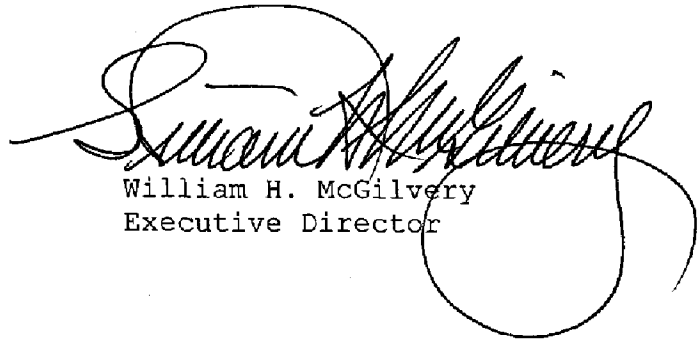
⁶ See Order No. 7078 (reissuing authority where applicant satisfactorily accounted for vehicles and markings).

⁷ See Order No. 7496 (prescribing one year of probation).

violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by applicant or its owners during the period of probation shall constitute grounds for immediate suspension and/or revocation of applicant's operating authority without further proceedings, regardless of the nature and severity of the violation.

5. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, MILLER AND MCDONALD:



William H. McGilvery
Executive Director