

UNITED STATES DEPARTMENT OF COMMERCE
OFFICE OF THE UNDERSECRETARY FOR INDUSTRY AND SECURITY
WASHINGTON, DC 20230

In the Matter of:)
)
SkyTechnic)
Kiyevskoye Shosse 22-Y)
Moskovsky Settlement)
Moscow, Russia 108811)
)
Skywind International Limited)
Room 2403A 24/F Lippo CTR Tower One)
89 Queensway, Admiralty)
Hong Kong)
)
Hong Fan International)
Shop 102, Level 1)
One Exchange Square)
Hong Kong)
AND)
Room A 11/F Henfa Commercial Building)
348-350 Lockhart Road)
Hong Kong)
AND)
Vistra Corporate Services Centre)
Wickhams Cay II)
Road Town, Tortola, British Virgin Islands)
)
Lufeng Limited)
Room A 11/F Henfa Commercial Building)
348-350 Lockhart Road)
Hong Kong)
AND)
Vistra Corporate Services Centre)
Wickhams Cay II)
Road Town, Tortola, British Virgin Islands)
)
Unical dis Ticaret Ve Lojistik JSC)
34140 Zeytinlik Mh. Halcki Sk)
Iten Han Gue Carsi Blok No 28/58)
Bakirkoy, Istanbul, Turkey)
AND)
Room A 11/F Henfa Commercial Building)
348-350 Lockhart Road)

Docket Number: 24-TDO-0001

Hong Kong)
)
Izzi Cup DOO)
 Koste Cukia 14)
 Zemun 200915)
 Serbia)
 AND)
 Jl.Danau Tondano No.55)
 80228 Sanur – Bali)
 Indonesia)
)
Alexey Sumchenko)
 Hong Kong)
)
Anna Shumakova)
 Russia)
)
Branimir Salevic)
 Koste Cukia 14)
 Zemun 200915)
 Serbia)
 AND)
 Jl.Danau Tondano No.55)
 80228 Sanur - Bali)
 Indonesia)
)
Danijela Salevic)
 Koste Cukia 14)
 Zemun 200915)
 Serbia)
 AND)
 Jl.Danau Tondano No.55)
 80228 Sanur - Bali)
 Indonesia)
)
 _____)

FINAL DECISION AND ORDER

Before me for my final decision is a Recommended Decision (“RD”) issued on
 September 4, 2024, by Administrative Law Judge (“ALJ”) Tommy Cantrell. The RD
 recommends that I dismiss the appeal filed by Alexey Sumchenko (“Sumchenko”) of the
 Temporary Denial Order (“TDO”) issued against him on June 12, 2024. As discussed

further below, I accept the findings of fact and conclusions of law in the ALJ's RD. As a result, Sumchenko's appeal is dismissed and the TDO issued against him is affirmed.

I. Background

On June 12, 2024, the Assistant Secretary of Commerce for Export Enforcement ("Assistant Secretary") of the Bureau of Industry and Security ("BIS") issued a TDO against Sumchenko, Hong Fan International ("Hong Fan"), Lufeng Limited ("Lufeng"), and Skywind International Limited ("Skywind")—three companies with which Sumchenko was affiliated—and several other companies and individuals, including SkyTechnic, a Russian aircraft parts supplier. 89 Fed. Reg. 51302. The TDO states that SkyTechnic "developed and continues to utilize a network of Hong Kong-based shell companies, including Skywind, Hong Fan, and Lufeng, to obtain civil aircraft parts from the United States and obfuscate the ultimate end users of those parts in Russia, contrary to the requirements of the [Export Administration Regulations (the "EAR" or the "Regulations)]." *Id.*

On July 25, 2024, Sumchenko, through counsel, filed an appeal with the U.S. Coast Guard ALJ Docketing Center pursuant to 15 C.F.R. § 766.24(e)(3) of the EAR. On July 29, 2024, the Chief ALJ assigned the appeal to ALJ Cantrell. On August 20, 2024, BIS filed a response to the appeal. ALJ Cantrell issued the RD on September 4, 2024, which my office received on September 5, 2024. On September 6, 2024, the BIS Appeals Coordinator requested views from the parties on extending the time to issue my Final Decision in this appeal. Both parties consented to an extension of time, and, on September 11, 2024, I issued an Order extending the period of time to issue this Final Decision to September 30, 2024.

II. Standard

Section 766.24 of the EAR authorizes the Assistant Secretary to issue a TDO for a period of up to 180 days to prevent an “imminent violation” of the Regulations. 15 C.F.R. § 766.24(b)(1), (b)(4). The Regulations require that the TDO define the imminent violation and state why the TDO was issued without a hearing. *Id.* at § 766.24(b)(2). Because all TDOs are public, “the description of the imminent violation and the reasons for proceeding on an *ex parte* basis . . . shall be stated in a manner that is consistent with national security, foreign policy, business confidentiality, and investigative concerns. *Id.*

A violation may be imminent “either in time or in degree of likelihood.” *Id.* at 766.24(b)(3). Accordingly, “BIS may show a violation is about to occur, or that the general circumstances of the matter under investigation . . . demonstrate a likelihood of future violations.” *Id.* To establish the likelihood of a future violation, “BIS may show that the violation under investigation . . . is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent.” *Id.*

The Regulations provide that a “respondent may appeal [the issuance of a TDO] on the grounds that the finding that the order is necessary in the public interest to prevent an imminent violation is unsupported.” *Id.* at § 766.24(e)(2).

III. Discussion

In his appeal, Sumchenko argues that there is no support for the finding that the TDO against him is necessary to prevent an imminent violation of the EAR. Sumchenko Appeal at 5. Specifically, Sumchenko argues that the alleged misconduct outlined in the TDO occurred after he relinquished ownership of Hong Fan, Lufeng, and Skywind, and that there is no evidence that he was aware of or involved in the conduct that occurred

when he did own the companies. Sumchenko Appeal at 5-7.

The ALJ makes fourteen recommended findings of fact in the RD. RD at 4-5. I accept these recommended findings of fact. Based on these findings of fact, the ALJ concluded in the RD that BIS successfully demonstrated the TDO against Sumchenko was necessary to prevent an imminent violation of the EAR. RD at 8. For reasons discussed below, I agree with the ALJ's conclusion.

First, the record shows that Sumchenko was the owner and director of Hong Fan, Lufeng, and Skywind during 2022 and 2023. RD at 6. Specifically, with respect to Hong Fan and Lufeng, Sumchenko was the owner of these entities until he transferred his ownership interest in June 2022. Sumchenko Appeal at 7 and Exs. E and F. He was a director of Hong Fan and Lufeng until he resigned those positions in November 2022. Sumchenko Appeal at 6. As noted in BIS's response to Sumchenko's appeal, even though Sumchenko had transferred his ownership rights in Hong Fan and Lufeng in June 2022, Sumchenko was identified as the beneficial owner of bank accounts for Hong Fan and Lufeng until at least September 2023. BIS Response at 5-6; RD at 4. For Skywind, Sumchenko was a director and owner until he resigned his position and transferred his ownership rights in Skywind in November 2023. Sumchenko Appeal at 6; RD at 4.

Second, the record reflects that between June 2022 and March 2023, Hong Fan, Lufeng, and Skywind were involved in transactions or attempted transactions to deliberately obtain U.S.-origin aircraft parts on behalf of Russian entities, and to conceal the true identities of the Russian purchasers in those transactions, in violation of the Regulations. RD at 8.

Third, as discussed above, during the time that Hong Fan, Lufeng and Skywind

were involved in violations of the EAR, Sumchenko was an owner or director of these companies, or the beneficial owner of bank accounts connected to these entities.

Sumchenko argues in his appeal that because he was no longer the owner of Hong Fan and Lufeng at the time of some of the conduct at issue in the TDO, the “sole connection” between the conduct outlined in the TDO as it relates to those entities and Sumchenko “has been broken.” Sumchenko Appeal at 7. I find that the other connections established in the record, such as Sumchenko’s position as director of Hong Fan and Lufeng until November 2022 and his role as beneficial owner of bank accounts for these companies until at least September 2023, are enough to connect Sumchenko to the conduct that involved Hong Fan and Lufeng through September 2023. As a result, I agree with the ALJ’s conclusion that Sumchenko shares responsibility for the conduct of Hong Fan, Lufeng, and Skywind described in the TDO, which includes transactions deliberately designed to evade the prohibitions of the EAR. RD at 8.

As discussed above, the Regulations allow BIS to issue a denial order upon a showing that “the order is necessary in the public interest to prevent an imminent violation of [the EAR.]” 15 C.F.R. § 766.24(b)(1). A violation may be considered “imminent” either in time or “or in degree of likelihood.” *Id.* at § 766.24(b)(3). BIS may consider past participation in deliberate violations of the EAR as a factor when deciding whether a person is likely to participate in future violations of the EAR. *See* 15 C.F.R. § 766.24(b)(3). BIS has established that Hong Fan, Lufeng, and Skywind were involved in deliberate violations of the EAR, and that Sumchenko is responsible for that conduct based on his various roles with these companies at the time the conduct took place. As a result, I agree with the ALJ’s conclusion in the RD that, BIS has established additional violations

are “imminent” within the meaning of 15 C.F.R. § 766.24(b)(3), and that the TDO against Sumchenko is necessary to prevent an imminent violation of the EAR.

Sumchenko argued in his appeal that even if he was the owner and director of companies that violated the EAR, BIS has not established that he “was involved in or even knew about those events.” Sumchenko Appeal at 6. The ALJ found this argument unpersuasive, and I find it unpersuasive as well. As the ALJ notes, Sumchenko made no effort to refute the allegations against Hong Fan, Lufeng, or Skywind. RD at 9. Just as important, Sumchenko makes no effort to explain his role in these companies or how each of these companies could have been involved in a scheme to violate the EAR without his knowledge given his various roles, including as owner or director. In addition, Sumchenko concedes that in February 2023, he directed a third party to pay Lufeng approximately \$450,000. Sumchenko Appeal at 4. Sumchenko argues, however, that “it is not clear how directing ‘a third party to pay Lufeng’ indicates ownership or control over Lufeng.” *Id.* Setting aside the fact that Sumchenko only offers vague assurances “based on information and belief” that the transaction was related to “the process of divestment that Mr. Sumchenko was undertaking at the time,” Sumchenko offers no specific explanation for why he would direct a third party to make payment to Lufeng if he no longer had an interest in the company. *See* Sumchenko Appeal at 5. And since Sumchenko was the beneficial owner of a bank account for Lufeng at the time he instructed the third party to transfer payment, his potential access to the funds suggests his financial interest in Lufeng, including the receipt of any benefits of the scheme to provide U.S.-origin parts to entities in Russia without authorization, continued after he transferred his ownership and resigned as director. Indeed, Sumchenko’s efforts to distance himself

from Hong Fan and Lufeng via changes to corporate paperwork, while at the same time maintaining control of related bank accounts and directing payment to Lufeng, may have been part of an attempt to evade detection. For these reasons, I agree with the ALJ's conclusion that Sumchenko may be held responsible for the actions of Hong Fan, Lufeng, and Skywind described in the TDO. RD at 9. I further agree with the ALJ's conclusion that "in the absence of the TDO, nothing would prevent [Sumchenko] from creating new companies to engage in the same violative conduct." RD at 10.

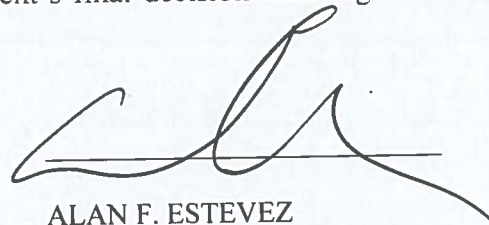
IV. Conclusion and Order

Based on my review of the record, I accept the findings of fact and conclusions of law made by the ALJ in his RD, and it is therefore **ORDERED:**

FIRST, that this appeal is DISMISSED.

SECOND, that this Final Decision and Order shall be served on Appellants and on BIS and shall be published in the *Federal Register*. In addition, the ALJ's Recommended Decision shall also be published in the *Federal Register*.

This Order, which constitutes the Department's final decision with regard to this appeal, is effective immediately.



ALAN F. ESTEVEZ
Under Secretary of Commerce for
Industry and Security

Dated: September 26, 2024

**UNITED STATES OF AMERICA
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230**

In the Matter of:

SkyTechnic
Kiyevskoye Shosse 22-Y
Moskovsky Settlement
Moscow, Russia 108811

Skywind International Limited
Room 2403A 24/F Lippo CTR Tower One
89 Queensway, Admiralty
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Shop 102, Level 1
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AND
Room A 11/F Henfa Commercial Building
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Hong Kong

AND
Vistra Corporate Services Centre
Wickhams Cay II
Road Town, Tortola, British Virgin Islands

Lufeng Limited
Room A 11/F Henfa Commercial Building
348-350 Lockhart Road
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AND
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Bakirkoy, Istanbul, Turkey
AND
Room A 11/F Henfa Commercial Building

Docket Number:

24-TDO-0001

**The Hon. Tommy Cantrell
Administrative Law Judge**

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AND
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Indonesia

Respondents

RECOMMENDED DECISION AND ORDER

This matter comes before me on Alexey Sumchenko's (Respondent) appeal of the Order Temporarily Denying Export Privileges (TDO) issued by the U.S. Department of Commerce Bureau of Industry and Security (BIS), through its Office of Export Enforcement (OEE) on June

12, 2024. OEE issued the TDO pursuant to the Export Administration Regulations (EAR), specifically 15 C.F.R. § 766.24.¹ After considering the evidence and arguments presented by the parties, and in accordance with the applicable law and regulations, I find BIS demonstrated the TDO is necessary in the public interest to prevent an imminent violation of the EAR, and I recommend the TDO be **AFFIRMED**.

I. PROCEDURAL BACKGROUND

On June 12, 2024, OEE issued a TDO against Respondent, preventing him from participating in transactions subject to the EAR for 180 days. On July 25, 2024, Respondent filed an appeal of the TDO. Thereafter, the Chief Administrative Law Judge assigned this matter to me on July 29, 2024, for adjudication.² On August 5, 2024, the parties filed a stipulation extending BIS' deadline to submit a reply to the appeal. BIS filed a reply to the appeal on August 20, 2024.

Respondent's appeal included seven documentary exhibits (Exhibits A-G), and a copy of the June 12, 2024, TDO (Ex. A). OEE's reply included two exhibits (Exhibits 1-2).³ The record is now closed, and the appeal is ripe for a recommended decision.

¹ Title 15 C.F.R. Parts 730-774 (EAR), were promulgated under the Export Administration Act of 1979 (EAA), formerly codified at 50 U.S.C. §§ 4601-4623. Although the EAA expired on August 21, 2001, the President, through Executive Order 13222 of August 17, 2001, and through successive Presidential Notices, continued the EAR in full force and effect under the International Emergency Economic Powers Act (IEEPA), codified at 50 U.S.C. § 1701, *et seq.* The EAA was repealed in 2018, with the enactment of the Export Control Reform Act (ECRA). *See* 50 U.S.C. § 4826. The ECRA provides BIS with permanent statutory authority to administer the EAR. The ECRA specifically states that all administrative or judicial proceedings commenced prior to its enactment are not disturbed by the new legislation. *See Id.*

² Pursuant to an interagency agreement, United States Coast Guard (USCG) Administrative Law Judges are permitted to adjudicate BIS cases.

³ *See Attachment A* for a listing of exhibits.

II. RECOMMENDED FINDINGS OF FACT

1. Skywind International Limited (Skywind), Hong Fan Global Limited (Hong Fan), and Lufeng Limited (Lufeng), are companies registered to do business in Hong Kong. (Exs. B-D, respectively).
2. Respondent was an owner and director of Skywind, Hong Fan, and Lufeng during 2022-2023. (Exs. A-G; Exs. 1-2).
3. Respondent transferred his ownership interest in and resigned his position as director of Skywind on November 23, 2023. (Ex. G).
4. Respondent resigned his position as director of Hong Fan on November 14, 2022, but remained a beneficial owner of Hong Fan until at least September 6, 2023. (Exs. E, and 1).
5. Respondent resigned his position as director of Lufeng on November 14, 2022, but remained a beneficial owner of Lufeng until at least September 6, 2023. (Exs. F and 2).
6. SkyTechnic is an aircraft parts supplier based in Moscow, Russia. (Ex. A at 3, 7).
7. During May and June 2022, Anna Shumakova, on behalf of SkyTechnic, discussed with Izzi Cup (a company registered in Serbia) methods of purchasing aircraft parts from the United States (U.S.) in contravention of export controls, including by using Skywind as a straw purchaser of the items. (Ex. A at 7).
8. In May 2022, Shumakova, on behalf of Skywind, informed a freight forwarder Skywind would complete purchases of aircraft parts on behalf of Pobeda Airlines, a Russian airline company that itself became the subject of a TDO on June 24, 2022. (Ex. A at 7).
9. In June 2022, SkyTechnic began using Hong Fan to facilitate the purchase of aircraft parts from the U.S. (Ex. A at 7).
10. Also in June 2022, Lufeng engaged in a transaction with Izzi Cup and served as the straw purchaser on an invoice for aircraft parts meant for SkyTechnic. (Ex. A at 8).
11. In October 2022, Hong Fan attempted to ship aircraft parts to the Maldives for Euro Asia. Euro Asia had a sales relationship with Aeroflot-Russian Airlines (Aeroflot), a company that itself became the subject of a TDO on April 7, 2022. (Ex. A at 7-8; *see* PJSC Aeroflot, 1 Arbat St., 119019, Moscow, Russia; Order Temporarily Denying Export Privileges, 87 Fed. Reg. 21611 (Apr. 12, 2022)).
12. In November 2022, Hong Fan worked with a freight forwarder to facilitate the purchase of aircraft parts for Pobeda Airlines, and the associated invoice was issued to SkyTechnic. (Ex. A at 8).

13. In February 2023, Respondent directed a third party to pay Lufeng approximately \$450,000.00 for services rendered to Skywind. (Ex. A at 5).
14. During February and March 2023, Hong Fan served as a straw purchaser for SkyTechnic, for the export of aircraft parts from the U.S., which were ultimately delivered to Aeroflot in Russia. (Ex. A at 8).

III. OPINION AND RECOMMENDED CONCLUSIONS OF LAW

BIS issues and enforces the EAR “under laws relating to the control of certain exports, reexports, and activities.” 15 C.F.R. § 730.1. The EAR is “intended to serve the national security, foreign policy, nonproliferation of weapons of mass destruction, and other interests of the United States.” 15 C.F.R. § 730.6. To prevent an imminent violation of the EAR, BIS may request the EEO issue a TDO on an *ex parte* basis. 15 C.F.R. § 766.24(a). A TDO is valid for a maximum of 180 days and the Assistant Secretary may renew a TDO in additional 180-day increments as deemed necessary. 15 C.F.R. § 766.24(b)(4), (d)(4).

A violation may be imminent “either in time or in degree of likelihood.” 15 C.F.R. § 766.24(b)(3). Accordingly, BIS may attempt to show “a violation is about to occur, or that the general circumstances of the matter under investigation...demonstrate a likelihood of future violations.” *Id.* With respect to demonstrating the likelihood of future violations, BIS “may show that the violation under investigation...is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent...” *Id.* Ultimately, to obtain a TDO against a respondent, BIS must show “the order is necessary in the public interest to prevent an imminent violation” of the EAR. 15 C.F.R. § 766.24(b)(1). Conversely, to prevail on appeal, a respondent must show “the finding that the order is necessary in the public interest to prevent an imminent violation is unsupported.” 15 C.F.R. § 766.24(e)(2).

A. BIS Demonstrated Likelihood of Imminent Violation

The June 12, 2024, TDO set forth facts showing a likelihood Respondent would imminently violate the EAR unless his export privileges were revoked. It established that BIS implemented a license requirement for the export to Russia of any aircraft or aircraft parts listed in Export Control Classification Number (ECCN) 9A991 on February 24, 2022. (Ex. A at 4). *See Implementation of Sanctions Against Russia Under the Export Administration Regulations (EAR)*, 87 Fed. Reg. 12226 (Mar. 3, 2022) (to be codified at 15 C.F.R. Parts 734, 738, 740, 742, 744, 746, and 772). On March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia, or a national of Russia, from being eligible for license exception Aircraft, Vessels, and Spacecraft (AVS). (Ex. A at 5). *See Imposition of Sanctions Against Belarus Under the Export Administration Regulations (EAR)*, 87 Fed. Reg. 13048 (Mar. 8, 2022) (to be codified at 15 C.F.R. Parts 734, 738, 740, 742, 744, and 746). The TDO then established that after those dates, companies owned and controlled by Respondent acted to subvert these export controls to obtain prohibited aircraft parts for Russian companies.

Specifically, the record shows Respondent was an owner and director of Skywind International Limited (Skywind), Hong Fan Global Limited (Hong Fan), and Lufeng Limited (Lufeng), during 2022-2023. (Exs. A-G; Exs. 1-2). Skywind, Hong Fan, and Lufeng are, and at all times relevant were, companies registered to do business in Hong Kong. (Exs. A-D). During May and June 2022, Anna Shumakova, on behalf of a Russian aircraft parts company called SkyTechnic, discussed with Izzi Cup, a company registered in Serbia, methods of purchasing aircraft parts from the U.S. in contravention of export controls, including using Skywind as a straw purchaser of the items. (Ex. A at 7). In May 2022, Shumakova, on behalf of Skywind, informed a freight forwarder that Skywind would purchase aircraft parts on behalf of Pobeda Airlines, a Russian airline company that itself became the subject of a TDO on June 24, 2022.

(Ex. A at 7). *See* Pobeda Airlines, 108811, Russian Federation, Moscow, p. Moskovskiy Kievskoe shosse 22nd km, 4/1. Moscow, Russia; Order Temporarily Denying Export Privileges, 87 Fed. Reg. 38707 (Jun. 29, 2022). Then in June 2022, SkyTechnic began using Hong Fan to facilitate the purchase of aircraft parts from the U.S. (Ex. A at 7). And in June 2022, Lufeng served as the straw purchaser on an invoice for aircraft parts meant for SkyTechnic. (Ex. A at 8).

In October 2022, Hong Fan attempted to facilitate the purchase of aircraft parts for Euro Asia, a company with a sales relationship with Aeroflot-Russian Airlines (Aeroflot), a company that itself became the subject of a TDO on April 7, 2022. (Ex. A at 7-8). *See* PJSC Aeroflot, 1 Arbat St., 119019, Moscow, Russia; Order Temporarily Denying Export Privileges, 87 Fed. Reg. 21611 (Apr. 12, 2022). In November 2022, Hong Fan worked with a freight forwarder to facilitate the purchase of aircraft parts for Pobeda Airlines, and the associated invoice was issued by SkyTechnic. (Ex. A at 8). During February and March 2023, Hong Fan served as a straw purchaser for SkyTechnic, for the export of aircraft parts from the U.S. which were ultimately delivered to Aeroflot in Russia. (Ex. A at 8).

Pursuant to the regulations governing these proceedings, a TDO is appropriate to prevent an imminent violation of the EAR. 15 C.F.R. § 766.24(b)(1). To show a violation is “imminent,” BIS may demonstrate a temporal proximity to a future violation or may show “that the general circumstances of the matter...demonstrate a likelihood of future violations.” 15 C.F.R. § 766.24(b)(3). In this regard, “BIS may show that the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent...” 15 C.F.R. § 766.24(b)(3). Here, the TDO clearly set out numerous instances of violations of the export controls imposed on February 24 and March 2, 2022, wherein the violations were not technical, but deliberate. For example, the TDO set forth in May and June of

2022, SkyTechnic discussed with Izzi Cup a strategy for obtaining U.S.-origin aircraft parts by placing Skywind on the invoice as the purchaser. (Ex. A at 7). The TDO then set forth numerous instances between June and November 2022 in which Skywind, Hong Fan, and Lufeng engaged in transactions to deliberately obtain U.S.-origin aircraft parts and conceal the actual purchasers (Russian companies). (Ex. A at 7-8).

Respondent led the companies that engaged in these violations, and thus Respondent shares responsibility for those violations. Having shown Respondent already violated the EAR in a deliberate manner, BIS successfully demonstrated that further violations were “imminent” within the meaning of 15 C.F.R. § 766.24, and an order temporarily denying Respondent’s export privileges would be necessary to prevent them.

B. Respondent’s Argument and Evidence Did Not Diminish BIS’ Case

As stated above, Respondent must show there is no support for the finding the TDO is necessary to prevent an imminent violation of the EAR. 15 C.F.R. § 766.24(e)(2). In his appeal, Respondent presented seven exhibits, one of which was a copy of the June 12, 2024, TDO (Ex. A); the remaining six exhibits were business records showing Respondent’s transfer of ownership in and resignation as director of Skywind, Hong Fan, and Lufeng. (Exs. B-G). With these exhibits as support, Respondent makes two arguments. He first argues a TDO is not necessary to prevent him from imminently violating the EAR because he is no longer an owner or director of Skywind, Hong Fan, and Lufeng. Specifically, Respondent argues the TDO “addresses alleged violations that occurred after February 2022,” and that Respondent “was divesting his ownership and resigning” from the companies during 2022 and 2023. (Appeal at Para. 14). Respondent asserts his “ownership of the companies is the only allegation that purportedly ties him to the alleged violations described in the TDO.” (Appeal at Para. 14). I am not persuaded.

First, I note Respondent never challenged the truth of the allegations of the TDO, he merely distances himself from the conduct by stating he gave up *ownership* of two of the companies (Hong Fan and Lufeng) by June 2022. (Appeal at Paras. 15, 16). Respondent conveniently ignores his own exhibits, which show he was still director of the companies until November 14, 2022. (Exs. E, F).

Respondent's exhibits also show he remained in control, as owner and director, of Skywind until November 23, 2023. (Ex. G). Despite Respondent's claim that he relinquished control of Hong Fan and Lufeng by November 14, 2022, BIS presented exhibits in its reply showing Respondent was listed as a beneficial owner of Hong Fan and Lufeng until at least September 6, 2023. (Exs. E, F; Exs. 1, 2). The TDO set forth numerous violations of the EAR committed by Skywind, Hong Fan, and Lufeng that occurred from May through November 2022, while Respondent was, by both his and BIS' claims, owner and director of the companies. (Ex. A at 7-8). As the director and owner of these companies, it is reasonable to conclude an order proscribing Respondent's export privileges is necessary to prevent future violations.

Respondent alternatively argues even if he was in control of the companies while they were engaged in the illicit conduct, the TDO does not prove he "was involved in or even knew about those events." (Appeal at Para. 14). I find this argument unpersuasive. As owner and director of the companies, Respondent's role imparts responsibility on him for the actions of the company. *See Faour v. U.S. Dept. of Agriculture*, 985 F.2d 217 (5th Cir. 1993) (petitioner was responsibly connected to actions of company because he was an officer, director, and owner of stock during time that company committed repeated violations of the law). Respondent did not refute any allegations of violative conduct in the TDO, but instead only demonstrated he has

executed paperwork to divest from the companies. In the absence of the TDO, nothing would prevent Respondent from creating new companies to engage in the same violative conduct.

WHEREFORE,

ORDER

IT IS HEREBY RECOMMENDED the Temporary Denial Order be **AFFIRMED**.

Done and dated September 4, 2024, at
Houston, Texas

A handwritten signature in black ink that reads "Tommy Cantrell". The signature is written in a cursive style with a large, prominent 'T' and 'C'.

The Hon. Tommy Cantrell
Administrative Law Judge
United States Coast Guard

Attachment A: Exhibit List

ATTACHMENT A

Respondent's Exhibits

- Exhibit A: Temporary Denial Order issued Jun. 12, 2024
- Exhibit B: Company Particulars – Skywind International Limited
- Exhibit C: Company Particulars – Hong Fan Global Limited
- Exhibit D: Company Particulars – Lufeng Limited
- Exhibit E: Resignation and transfer instruments – Hong Fan
- Exhibit F: Resignation and transfer instruments – Lufeng
- Exhibit G: Resignation and transfer instruments – Skywind

BIS Exhibits

- Exhibit 1: Sep. 6, 2023, email re: Hong Fan
- Exhibit 2: Sep. 6, 2023, email re: Lufeng

CERTIFICATE OF SERVICE

I hereby certify that I have transmitted the above document to the following persons, as indicated below:

ALJ Docketing Center
U.S Custom House
Email: aljdocketcenter@uscg.mil
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Gregory Michelsen, Esq.
Tristan de Vega, Esq.
Office of Chief Counsel for BIS
U.S. Dept. of Commerce
Sent by email

George Benaur, Esq.
Benaur Law LLC
Sent by email

Done and dated September 4, 2024, at
Houston, Texas



Ericka J. Pollard
Paralegal Specialist to
The Hon. Tommy Cantrell
Administrative Law Judge
United States Coast Guard