

U.S. Department of Homeland Security  
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FAX



Transportation  
Security  
Administration

## Interoffice Memorandum

To: Steve F. Earnest  
Federal Security Director

From: Richard A. Horn  
AFSD, LEO

Date: November 7, 2005

Re: TSA Flight Training Authorization Certifications Granted to Ineligible Aliens  
under the Alien Flight Student Program (AFSP)

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I respectfully provide the information to follow, which generously applies to the FAA and ICE as well, for whatever purpose or action that you and senior management deem appropriate.

As per our conversations on this topic, I sense considerable urgency: *some of the very same conditions that allowed the 9-11 tragedy to happen in the first place are still very much in existence today.* Aliens in the U.S., who are ineligible for flight training based upon their visa status, are now, and have been since 9/11, been allowed to undergo flight training and earn FAA airman certificates. Many of them can and do fly aircrafts unaccompanied. Some of these same aliens have even become Certified Flight Instructors. Literally thousands of aliens are involved in this situation. I believe that even the most casual observer would suggest that four years is a bit too long to resolve an issue that is so critical to our National Security.

If the information to follow is correct – and I am inclined to believe that it is – then we have a situation wherein TSA is routinely granting Flight Training Certificate letters to aliens who are not in the proper visas categories to undergo such training. This situation seems to exist notwithstanding the fact that ICE (Immigration) has taken the position that TSA's actions are misguided: Immigration maintains that only two visa categories allow aliens to participate in flight training in the U.S., and then only under defined conditions.

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I recognize, of course, that not every alien who undergoes flight training in an ineligible visa category is a terrorist. However, if there is just one who is successful in his mission, it could be a huge tragedy with enormous repercussions. The post event investigation of such an incident is certain to discover that the perpetrator was on an ineligible visa when he underwent flight training in the U.S. The investigators would also discover that there are thousands more that are potentially just like him. This makes our agency, indeed the entire federal government, subject to enormous liability should there be another tragedy before this problem is rectified.

The 9-11 pilots, Mohammed Atta, Marwan al Shehhi, Hani Hanjour et al underwent flight training in the U.S. on visas that disqualified them from having that training. They contracted for that training anyway. As stated, that same window of opportunity still exists today. I am told that aliens submit approximately 300 Flight Training Authorization requests to TSA every day, each of which is accompanied by a non refundable fee of \$130.00. (This equates to over \$10 million per year.) I am further told that, despite having immediate access to the applicant's Immigration status based upon the applicant's representations, and despite having the ability to verify the applicant's visa status through official channels, TSA employees routinely grant training authorizations to persons in visa categories that (according to ICE) specifically disallow that training. I am advised that that ICE (Immigration) has taken the position that only persons in visa categories M-1(training) and F-1 (student) are eligible for flight training.

Since September of 2004 (when TSA began issuing Certification of Training Letters), literally thousands of aliens have received flight training in the US and have been given FAA flight ratings under these circumstances. There are many more in the pipeline. As a practical matter, other entities, particularly the flight schools and to a lesser extent FAA, are inclined to take the position that if TSA gives the applicant a Flight Training Authorization Letter, then all is good – the training and the FAA certifications will follow.

As you know, there are ten General Aviation Airports located in our area of jurisdiction, each of which offers flight training. The commercial airports offer flight training as well. For the most part, these schools go unchecked as to whether their flight students are on the proper visa to receive the training. It should not be lost that "the more legitimate" flight schools receive approximately \$10,000.00 per student for this training. However, the amount could be much higher: for example, Mohammad Atta paid \$28,000.00 for this training. In my view the schools are primarily motivated by the profits generated by their flight training operations, not by National Security Interests. At this point it is of little consequence to them, either legally or morally, that they may be providing flight training to an individual who is in an improper visa category to receive flight training. They have seemingly taken the "don't ask, don't tell" approach to the visa situation. They do not consider themselves "watch dogs" for the government.

The FAA plays an important role in this process as well. Once the alien has received his Flight Training Authorization from TSA and commences training (albeit on a visa which prohibits this training), he ultimately seeks a certification flight check from FAA. If the FAA employee

determines that the candidate underwent the training while in the wrong visa category, he may deny the applicant his checkride, (which he is technically obligated to do even though there is no current guidance specific to this issue), but *even if* he does so, his actions are meaningless. The applicant can "shop" the FAA "marketplace" for a less diligent or more amenable FAA Inspector. However, the more likely scenario is that the applicant will seek out an independent, Designated Pilot Examiner (someone authorized by FAA to administer flight checks and grant certifications), who may be employed by the applicant's present or anticipated employer. Of course, the applicant may also curry favor with a gratuity of some sort. And finally, the FAA's central repository for these records, the Airman Certification Branch, in Oklahoma City will not "kick back" the checkride approval or nullify the training because of an improper visa. It is simply not set up, nor mandated to do so.

ICE (Immigration) has a big stake in this venture as well. Certainly, if an alien violates the conditions under which the visa was granted (like attending a flight school on an improper visa), it constitutes an immigration violation and deportation is possible. However, if ICE (Immigration) is never notified or otherwise learns of the violation, then clearly no action will be taken. Of course there is also another relevant perspective: if TSA knowingly grants approval for training through the issuance of a Flight Training Authorization letter to an ineligible alien, then TSA may be accused of collaborating with the alien to violate federal Immigration law.

I know that conversations are taking place within TSA and between TSA, FAA and ICE on this issue. However, the field has seen no progress. With respect to TSA's authority over the matter, the problem has existed since September of 2004. Meanwhile, thousands of aliens, some of whom may very well pose a threat to this county, are taking flight lessons, being granted FAA Certifications and are flying airplanes.

I am loathe to identify a problem without offering at least a few possible measures that may be taken to resolve or at least reduce the problem. Please find a short list of ideas, which admittedly, are not based upon full and complete access to all of the facts.

1. Establish a working group of senior managers from TSA, FAA and ICE (Immigration) to formulate and implement a fully integrated national policy for flight training of aliens that is consistent with the law, agency regulations and National Security Interests; prepare and distribute much-needed guidance and direction within the appropriate government agencies and to the flight training industry.
2. After coordination and consultation with ICE (Immigration), TSA should cease and desist granting Flight Certification Letters to aliens who, by merit of their Immigration status, are not eligible for flight training.
3. Coordinate with FAA and law enforcement agencies to ensure that aliens on anything but an F-1 or M-1 class visa are denied both training and certification.
4. Coordinate with FAA and ICE (Immigration) to review airman certificates alongside the list of TSA Authorization Letters and the subject's Immigration status when he underwent the training in order to locate and revoke those certificates that were not awarded consistent with the applicable US statutes.

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5. ~~Send an unmistakable message to aliens that attending flight training and earning FAA certifications in this country constitute privileges that one may apply for based upon qualifications and eligibility and further, convey the idea to aliens that these privileges may be granted, denied, suspended or revoked consistent with applicable laws and regulations. *These privileges are decidedly not to be confused with one of America's Constitutional entitlements.*~~

I keenly recognize the potential backlash here:

- 1) The flight training industry will take exception to anyone "killing their golden cow" to wit: the schools will not be pleased that their "bottom line" is suddenly and drastically reduced – they would no longer be able to provide flight training to aliens in improper visa categories.
- 2) TSA will lose a tremendous source of revenue. The number of applications for Flight Training Authorizations submitted to TSA will "dry up" as soon as the alien community learns that TSA will no longer grant Flight Authorizations to ineligible aliens. Certainly the aliens will not be inclined to submit their application, along with a non refundable \$130.00 remittance, if they believe the application will be denied.
- 3) And most significantly, the aliens who have already received the FAA Certifications while in ineligible visa categories will take strong exception to having those Certifications voided because they were in an ineligible visa category when they underwent the flight training.

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