



# AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

7950 Jones Branch Drive, Suite 400S | McLean, VA 22102 | 703-689-2270 | 888-FLY-ALPA

THE WORLD'S LARGEST PILOTS UNION | WWW.ALPA.ORG

June 23, 2022

The Honorable Alejandro Mayorkas  
Secretary  
U.S. Department of Homeland Security  
Washington, D.C. 20528

**RECEIVED**

**By ESEC at 1:46 pm, Jun 27, 2022**

Dear Secretary Mayorkas,

We are writing to alert you to a troubling development that threatens U.S. jobs and the stability of our air transportation system and runs counter to the president's goals to empower workers and secure our nation.

Spirit Airlines is seeking to misuse the "specialty occupation" visa designation to artificially suppress pilot compensation and displace qualified U.S. workers. Despite a verifiable excess of available, qualified pilots in the United States, Spirit Airlines is actively seeking to recruit for pilot positions from Australia using the E-3 visa program.

There is a growing trend of scapegoating pilots for an airline's inability to attract and retain staff. According to the Bureau of Labor Statistics and the Federal Aviation Administration, there are 1.5 pilots available for every airline pilot job, yet every day we see airlines pointing to a fictional pilot shortage to justify increasing the labor pool, weakening safety regulations, and reducing costs.

Prior to the COVID-19 pandemic, some U.S. airlines had begun to misuse U.S. visa programs—particularly E-3 and H-1B "specialty occupation" visas—to avoid market pressures and artificially maintain pilot pay rates and work rules insufficient to attract qualified U.S. pilots. Though this activity slowed during the first part of the pandemic, we now have evidence of Spirit Airlines management scheduling recruiting sessions in cities *in Australia* in July (see attached).

The "specialty occupation" designation is a statutory classification for which the U.S. Citizenship and Immigration Services Administrative Appeals Office (AAO) has consistently found that airline pilot jobs do not qualify. Clearly, this application of E-3 visas does not comport to the Biden administration's position on advancing labor rights in this country and across the globe.

Your Department has the ability to prevent Spirit Airlines' and other U.S. air carriers' misuse of visa programs to undercut U.S. airline pilot jobs. Specifically, the Department can adopt as precedential one of the many prior AAO non-precedent decisions finding that airline pilot positions are not a "specialty occupation" within the meaning of the Immigration and Nationality Act. Such adoption would facilitate accurate and consistent application of the "specialty occupation" standard to pilot positions among reviewers at U.S. Citizenship and Immigration Services (USCIS), as well as among reviewers at U.S. embassies and consulates responsible for making that determination for the E-3 visa program.

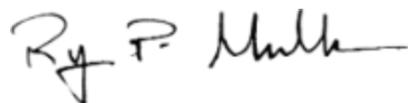
Furthermore, because the staff at U.S. embassies and consulates lack the subject-matter expertise possessed by USCIS reviewers, DHS should coordinate closely with the Department of State to ensure that E-3 reviewers are both aware of and correctly apply the applicable AAO precedent.

We are committed to partnering with you to stop this race to the bottom globally. We would like to meet with you as soon as possible to provide the most recent data and facts about pilot supply in the United States and why Spirit Airlines' actions are misaligned with the USCIS mission. We look forward to the opportunity to discuss this issue and how we can protect the rights of U.S. airline workers as soon as possible.

Sincerely,



Captain Joseph G. DePete  
President, Air Line Pilots Association, International



Captain Ryan Muller  
Spirit Airlines Master Executive Council Chairman  
Air Line Pilots Association, International

# Come Soar With Us At Spirit

*Spirit is coming to Australia!*

Our Spirit team will be visiting the following locations:

- Melbourne, Victoria 9<sup>th</sup> & 10<sup>th</sup> of July
- Brisbane, Queensland 12<sup>th</sup> & 13<sup>th</sup> of July
- Sydney, NSW 15<sup>th</sup> & 16<sup>th</sup> of July

For details please email [foreign.pilot@spirit.com](mailto:foreign.pilot@spirit.com)





**U.S. Citizenship  
and Immigration  
Services**

July 21, 2022

Captain Joseph G. DePete  
President  
Air Line Pilots Association, International  
7950 Jones Branch Drive, Suite 400S  
McLean, VA 22102

Dear Captain DePete:

Thank you for your June 23, 2022 letter to the Department of Homeland Security (DHS). Secretary Mayorkas asked that I respond on his behalf.

U.S. Citizenship and Immigration Services (USCIS) is required by statute and regulation to review each submitted petition or application and make a decision by applying the facts to the law. As you know, under the law, the E-3 nonimmigrant visa classification is available to nationals of Australia coming to the United States to work in a specialty occupation, which requires theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States. Therefore, airline pilot positions typically do not qualify as a specialty occupation because the occupation does not normally require a bachelor's or higher degree in a specific specialty, or its equivalent. An employer, however, may establish that their particular airline pilot position qualifies as a specialty occupation if the employer normally requires a bachelor's or higher degree in a specific specialty, or its equivalent, for its airline pilot positions.

Like other petitions reviewed by USCIS, E-3 petitions are adjudicated on the basis of the specific evidence submitted and consideration of whether or not the evidence is sufficient to meet the legal requirements for the classification. Moreover, decisions of the Administrative Appeals Office apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record or proceedings, the issues considered, and applicable law and policy. Therefore, differing outcomes in the adjudication of E-3 petitions for pilot positions is not indicative of an inconsistent application of the "specialty occupation" standard.<sup>1</sup>

In addition, the statute governing E-3 petitions does not require that employers of E-3 workers show a shortage of U.S. workers in the occupation. However, the law does require

---

<sup>1</sup> Although DHS generally coordinates with the Department of State (DOS) on matters concerning the E-3 program, and DOS follows DHS guidance in adjudicating E-3 visa applications overseas, DHS cannot speak on behalf of DOS and its practices.

employers to comply with several requirements regarding the wages and working conditions for its E-3 workers to obtain the necessary labor condition application. For example, employers that employ an E-3 nonimmigrant must, among other requirements, pay the E-3 worker the “required wage rate” applicable to each work site, offer the E-3 worker the same working conditions and fringe benefits as are offered to similarly employed U.S. workers, and attest that the employer does not employ an E-3 worker where there is a strike/lockout in progress in the worker’s occupation. When there is a collective bargaining representative for the occupation in which the E-3 worker will be employed, the employer must provide notice of the labor condition application to the collective bargaining representative.

Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", with a long horizontal flourish extending to the right.

Ur M. Jaddou  
Director