

DECISION 2017- 02-06
TRAVEL AGENCY COMMISSIONER – AREA 3

Jo Foged
685 Remuera Road
Remuera, Auckland 1050
New Zealand

Applicant:

Travelgenio SL.
C/Albasanz 15, Edificio A, 2 Izq.
Madrid 28037

Spain

for

Travelgenio Australia Pty Ltd.

Level 17, 383 Kent St.

Sydney NSW 2000

Australia.

Represented by Mr Mariano Pelizzari, Chief Executive Officer.

Respondent:

Agency Administrator, International Air Transport Association, IATA,
Geneva, Switzerland.

Represented by Mrs Ooi Hwa Tham, Manager Agency Management Asia/Pacific,
IATA, Singapore.

The Case and Decision.

The Applicant sought accreditation as a Head Office location in Australia under the "Online Agent " provisions of section 2 of Resolution 818g. IATA disapproved the application on the grounds that "your Agency does not fully meet the criteria for approval due to the applicant does not have, at the place of business under application, the facility to issue on behalf of Members/Airlines participating in BSP, STDs through the use of an approved Electronic Ticketing System as defined in Resolution 854."

The address given for Travelgenio Australia Pty Ltd was that of its non-travel organisation representative agent Grant Thornton at L17,383 Kent St, Sydney NSW 2000, Australia.

In its rebuttal of IATA's disapproval the Applicant stated that it:-

- met all local legislation and taxation rules
- met all local IATA financial and local criteria

- as an Online Travel Agent the ticketing process was performed by an online application

- and had, within the organisation, several locations with the facilities to issue International Air Passenger Transportation.

That being its considered position the Applicant sought a review of IATA's action.

To further support its disapproval IATA highlighted an Australian Government regulation under tax treaties governing companies trading in Australia which reads as follows;-

"Under Article 5(5)14 of Australia's Tax Treaties, an enterprise is deemed to have a permanent establishment where a person, other than an agent of an independent status, acts on behalf of an enterprise and habitually exercises an authority to substantially negotiate or conclude contracts on behalf of the enterprise. 15. However, under Article 5(6)16 an enterprise will not be deemed to have a permanent establishment in Australia merely because that enterprise carries on business in Australia through a broker, general commission agent or any other agent of independent status, where the agent is acting in the ordinary course of their business. "

In examining the factors involved in this case it is clear that the Applicant is seeking accreditation for Travelgenio Australia Pty Ltd as a Head Office location in Australia. As a distinct legal entity it stands alone from any other Travelgenio accredited location. Information sought by the writer has established that Travelgenio has IATA accredited Head Office locations in Spain, Portugal and France manned by staff employed directly by Travelgenio. They in turn oversee accredited Branch Office web addresses in a number of other European countries.

The only criteria exceptions detailed in Resolution 818g subparagraph 2.1.14 "Online Agent " are the physical requirements relating to "Premises" and "Security". The requirement for "Staff " as described in subparagraph 2.1.3 is not excluded and hence must be met. It reads:-

"The applicant must have in its employment competent and qualified staff able to sell international air transportation and correctly issue electronic travel documents and report these through the BSP. "

This criteria is not met by the non-travel organisation representative agent entity location recorded in the Application Form.

As a matter of interest Travelgenio's home office has confirmed that its IATA accredited Head Office locations in Spain, Portugal and France do have the facility to issue electronic tickets through the use of an approved system as defined in Resolution 854.

Turning to IATA's reference to the Applicant's non-compliance, in their view, with the Australian Tax Treaties regulation described above it is the writer's observation that this does not form part of the criteria to be met in Section 2 and as a consequence is not a consideration when assessing the application. It is a matter solely between the Applicant company and the Australian Tax Authorities.

IATA also justifies its adding of "Security" by stating that it is based on "the applicant not fully complying with the Qualifications for Accreditation, notwithstanding the exceptions granted under On-line Agents 2.1.14 and 2.1.15." The writer finds such an inclusion contrary to the provisions of subparagraph 2.1.14 and, hence, not relevant.

However, that being said, the writer agrees with IATA's action in disapproving the application for accreditation. The reasons given in wording for arriving at that conclusion differ in detail but the principle is the same i.e. the Applicant does not physically exist at the location where accreditation as a Head Office is sought.

Therefore based on the foregoing it is hereby decided as follows;-

1. IATA's action in disapproving the application of Travelgenio Australia Pty Ltd for accreditation as a Head Office in Australia is upheld.

Decided this 6th day of February 2017 in Auckland.

Jorgen Foged
Travel Agency Commissioner Area 3

Notes:

1. As per Resolution 820e, Section 4, any Party has the right, if it considers itself aggrieved by this Decision, to seek review by Arbitration in accordance with the provisions of Resolution 824, Section 14.
2. The Parties are advised that according to Subparagraph 2.10 of Resolution 820e, any of them may request an interpretation of this Decision, or for a correction of any error in computation, any clerical or typographical error, or any omission in this Decision. Such request must be made within 15 days of receipt of the electronic version of this Decision.