

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 03-1386

September Term, 2004

Filed On: September 24, 2004 [850267]

Dallas E. Butler *et al.*,

Petitioners,

v.

Federal Aviation Administration,

Respondent.

On Petition for Review of an Order of the Federal Aviation Administration.

Before: EDWARDS, HENDERSON and GARLAND, *Circuit Judges*.

J U D G M E N T

This cause was considered on the record from the Federal Aviation Administration (FAA) and on the briefs by counsel. The petitioners, who are licensed and certified pilots over age 60, seek review of an FAA order denying their applications for exemption from the “Age 60 Rule,” 14 C.F.R. § 121.383(c), which prohibits a pilot from serving on a commercial airplane after his 60th birthday. Although the petitioners purport to seek an “exemption,” the petition lacks specific information to justify exempting the individual petitioners as required under the FAA regulations. *See* 14 C.F.R. § 11.61 (“You must include the following information in your petition for an exemption . . . The reasons why granting the exemption would not adversely affect safety, or how the exemption would provide a level of safety at least equal to that provided by the rule from which you seek the exemption”). It is plain from the petitioners’ arguments before the agency and before the court that they initiated this proceeding in order to challenge directly the validity of the rule itself, which is properly effected only through a petition for rulemaking rather than a petition for exemption. *See* 14 C.F.R. §§ 11.61, 11.73; *see also Yetman v. Garvey*, 261 F.3d 664, 668-69 (7th Cir. 2001); *Keating v. FAA*, 610 F.2d 611, 612 (9th Cir. 1979); *Rombough v. FAA*, 594 F.2d 893, 897 (2nd Cir. 1979). Accordingly, it is

ORDERED that the petition for review is denied.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is

directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk