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B-110831 August 4, 1952

Number: B-110831

Date: 1952-08-04

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The Honorable The Secretary of the Navy

My dear Mr. Secretary:

Reference is made to your letter of July 14, 1952, requesting decision as to the legality of the payment of wages to Mr. Otto Ah Ching, an alien, for services performed at Pearl Harbor Naval Shipyard. It appears that he obtained employment by falsely certifying he was a citizen of the United States; that upon discovery that he was a citizen of Great Britian, he was permitted to resign in liew of removal; that wage earned for the period January 3 to February 10, 1952, were prior to discovery of his alienage but compensation from February 11 to February 18, 1952 is being withheld pending decision. It is stated that if his alien status had been known, Mr. Ah Ching would not have been employed.

Section 603 of the act of October 18, 1952, 65 Stat. 444, making appropriations for the Department of Defense for 1951, contains the following provision:

"During the current fiscal year, provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States shall not apply to personnel of the Department of Defense.

As there was no statutory bar to the employment of aliens by the Department of the Navy, the falsification of his application with respect to citizenship is not considered such as to render his employment void ab initie but voidable only. Consequently, there is no question of a de facto status involved, and the employee is entitled to be paid all compensation earned by him prior to the effective date of his resignation.

Sincerely yours,

Lindsey C. Warren Comptroller General of the United States