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B-133877 October 16, 1957

Number: B-133877

Date: 1957-10-16

B-133877 October 16, 1957

Honorable Irving H. Ives United States Senate

Dear Senator Ives:

This refers to your letter of September 18, 1957, concerning the claim of Mr. Frederick H. Starr, Bronxville, New York, for salary, terminal leave, and lump-sum payment for annual leave alleged to be one at date of separation from the service as an employee of the Housing and Home Finance Agency, Federal Housing Administration.

The claim was disallowed by our Office settlement dated August 30, 1957, upon the basis that Mr. Starr was not a citizen of the United States. When Mr. Starr executed Standard Form No 57, "Application for Federal Employment," with the Federal Housing Administration on February 1, 1956, he stated thereon that he was a citizen of the United States; also, be again stated on Standard Form No. 61, Appointment Affidavit executed July 2, 1956, that he was citizen of the United States. However, subsequent investigation revealed that he was not a citizen of the United States and that in addition he had furnished conflicting information concerning the correct date of his birth.

A review of Mr. Starr's case indicates that he was employed during the period July 2, 1956, to May 23, 1957, and that he is a citizen of Canada. In that connection section 202 of the General Government Matters Appropriation Act, 1957, 70 Stat. 280, reads in pertinent part as follows:

"Unless otherwise specified and during the current fiscal year, no part of any appropriation contained in this or nay other Act shall be used to pay the compensation of any officer or employee of the Government of the United States (including any agency, the majority of the stock of which is owned by the Government of the United States), * * *. This section shall not apply to citizens of the Republic of the Philippines or to nationals of those countries allied with the United States in the current defense effor, * * *."

The record shows Canada is a member of the North Atlantic Treaty Organization. Therefore, Mr. Starr comes from a country the citizens of whom are excepted from the prohibition contained in such act. As there does not appear to be any statutory bar to the employment of a Canadian citizen by the Housing and Home Finance Agency, the falsification by Mr. Starr of his citizenship in his application for employment and his appointment affidavit is not considered such as to render his employment void ab initio but voidable only.

Therefore, there is no question of a de facto status involved, and Mr. Starr is entitled to be paid all compensation earned by him prior to the effective date of his resignation and for all accrued annual leave. A settlement in favor of the claimant will be issued forthwith.

The enclosure received with your letter is returned as requested.

Sincerely yours,

FRANK G. WEITZEL Assistant Comptroller General of the United States

Enclosure