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B-139667 June 22, 1959

Number: B-139667

Date: 1959-06-22

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The Honorable The Secretary of Health, Education, and Welfare

Dear Mr. Secretary:

On April 30, 1959, Mr. Joseph C. Columbus, Chief, Payment Center, Bureau of Old-Age and Survivors Insurance, Social Security Administration, San Francisco, submitted as authorized certifying officer a voucher to us representing final salary and lump-sum leave payment to Mrs. Mollie O'Leary. Mr. Columbus requested our decision whether the present voucher may be certified for payment, and be asked whether previous salary payments to Mrs. O'Leary should be refunded for the reason that she is not a citizen of the United States.

As shown in Mr. Columbus' letter, a copy of which is enclosed, Mrs. O'Leary was employed at the Payment Center from September 16, 1958, through March 31, 1959, as a clerk, grade GS-2. Mrs. O'Leary entered this country from Peru in 1929 as a minor child with her father, her mother, and other minor brothers and sisters. The father had resided previously in the United States and the family believed all though the years that they had obtained citizenship through the father. When Mrs. O'Leary discovered on March 30, 1959, that the father had never become a citizen and that, therefore, she was not a citizen of the United States, she notified her superiors as at their suggestion she resigned effective March 31, 1959.

Section 202 of the General Government Matters Appropriations Act, 1959, 72 Stat. 220, which prohibits generally the payment of compensation to noncitizens whose post of duty is in continental United States, specifically provides that the "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 effort." Concerning whether Mrs. O'Leary, as a Peruvian national, may be exempt from the prohibition contained in the statute, our Office takes the position hat the responsibility for making that determination, that is, whether Peru is a country "allied with the United States in the current defense effort," rests primarily with the department or agency whose appropriation is involved. A determination based on reasonable grounds will be questioned in the audit by our Office.

We are addressing our decision on this question to you instead of directly to Mr. Columbus because of the necessity for such a determination administratively before the voucher may be certified for payment. In this connection, we direct your attention to Article 3 of The Inter-American Treaty of Reciprocal Assistance of September 2, 1949, to which Peru was a party with the United

States. Article 3 reads in part:

"I. The High Contrasting Parties agree that an armed attack by any State against an American State shall be considered as an attack against all the American States, and consequently each one of the said Contracting Parties undertakes to assist in meeting the attack. * * *"

Therefore, if you determine that Peru is allied with the United States in the current defense effort within the meaning of the Statute, the voucher, which is returned herewith, may be certified for payment, if otherwise proper, and there will be no necessity for Mrs. O'Leary's refunding salary already received in her position with you Department.

Sincerely yours,

JOSEPH CAMPBELL Comptroller General of the United States

Enclosures