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B-140836, Oct. 5, 1959

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B-140836, OCT. 5, 1959

TO THE SECRETARY OF STATE:

ON AUGUST 10, 1959, THE ASSISTANT SECRETARY FOR ADMINISTRATION RECOMMENDED TO OUR OFFICE THAT RELIEF BE GRANTED VIOLA JOHNSON, UNITED STATES DISBURSING OFFICER AT BOGOTA, COLOMBIA, FOR A SHORTAGE IN HER ACCOUNTS WHICH WAS OCCASIONED BY HER ACCEPTANCE OF A $100 COUNTERFEIT NOTE.

THE RECORD SHOWS THAT SOMETIME IN 1957 THE NOTE IN QUESTION WAS PRESENTED TO THE CASHIER AT BOGOTA BY A STAFF MEMBER ON BEHALF OF A VISA APPLICANT WHO NEEDED CHANGE TO PAY A NECESSARY FEE. THE CASHIER APPARENTLY HAD MISGIVINGS AS TO THE AUTHENTICITY OF THE NOTE AND HE BROUGHT IT TO THE ATTENTION OF THE DISBURSING OFFICER. THE DISBURSING OFFICER EXAMINED THE NOTE AND, ALTHOUGH IT APPEARED TO HAVE BEEN WATER SOAKED, DECIDED THAT IT WAS GENUINE. SUBSEQUENTLY, THE NOTE WAS SOLD TO THE BOGOTA BRANCH OF THE NATIONAL CITY BANK OF NEW YORK, TOGETHER WITH THE MONTHLY SALE OF THE EMBASSY'S UNITED STATES CURRENCY. THE DISBURSING OFFICER CALLED THE BANK'S ATTENTION TO THIS PARTICULAR NOTE. IT IS ALLEGED THAT THE BANK WAS UNABLE TO ASCERTAIN IF THE NOTE WAS COUNTERFEIT. IN ANY EVENT, THE BANK AGREED TO ACCEPT IT ONLY WITH THE CLEAR UNDERSTANDING THAT THE EMBASSY WOULD MAKE REDEMPTION IN THE EVENT THE BANK COULD NOT MAKE DISPOSITION. WITHIN A SHORT TIME THE EMBASSY WAS REQUESTED TO MAKE RESTITUTION.

THE CASHIER WHO INITIALLY RECEIVED THE NOTE TOLD THE DISBURSING OFFICER THAT HE HAD RECORDED THE NAME AND ADDRESS OF THE PERSON WHO GAVE THE NOTE TO HIM. WHEN THE NOTE WAS RETURNED FROM THE BANK THE CASHIER WAS REQUESTED TO FURNISH THIS INFORMATION. WHEN HE STATED THAT HE DID NOT HAVE IT, AN INVESTIGATION WAS CONDUCTED IN THE EMBASSY TO ASCERTAIN THE IDENTITY OF THE INDIVIDUAL. NO ONE IN THE CONSULAR SECTION WAS ABLE TO FURNISH THE NAME AND A SEARCH OF THE CONSULAR FEE RECORDS PROVED UNSUCCESSFUL.

THE EMBASSY TRANSMITTED THE NOTE TO THE TREASURY DEPARTMENT FOR EXAMINATION UNDER SEPARATE CERTIFICATE OF DEPOSIT, NO. 13, DATED SEPTEMBER 18, 1957. THE TREASURY DEPARTMENT DETERMINED THAT THE NOTE WAS COUNTERFEIT. THE RECORD BEFORE OUR OFFICE DOES NOT CONTAIN ANY STATEMENT FROM THE TREASURY DEPARTMENT WHICH WOULD INDICATE WHETHER THE GENUINENESS OF THE NOTE WOULD HAVE, IN THE USUAL COURSE OF BUSINESS, BEEN QUESTIONED BY AN ORDINARY PRUDENT PERSON.

IT HAS BEEN ADMINISTRATIVELY DETERMINED THAT THE RECEIPT OF THE COUNTERFEIT NOTE OCCURRED WHILE THE DISBURSING OFFICER WAS ACTING IN THE DISCHARGE OF HER OFFICIAL DUTIES AND WITHOUT FAULT OR NEGLIGENCE ON HER PART. ON THE BASIS OF THIS DETERMINATION RELIEF IS REQUESTED UNDER THE ACT OF AUGUST 1, 1947, AS AMENDED, 61 STAT. 720, 31 U.S.C. 82A-1.

ON THE BASIS OF THE PRESENT RECORD, WE ARE UNABLE TO CONCUR WITH THE ADMINISTRATIVE FINDING OF LACK OF NEGLIGENCE ON THE PART OF THE DISBURSING OFFICER. IT WOULD SEEM THAT THERE WAS SUFFICIENT DOUBT CONCERNING THE AUTHENTICITY OF THE NOTE AT THE TIME OF PRESENTMENT TO WARRANT REFUSAL. THE MERE SELF-SERVING STATEMENT THAT THE BANK WAS UNABLE TO DETERMINE WHETHER THE NOTE WAS GENUINE IS NOT SUFFICIENT, IN AND OF ITSELF, TO DEMONSTRATE THAT THE NOTE APPEARED TO BE GENUINE. THE RECORD SHOWS THAT THE BANK REFUSED ACCEPTANCE UNTIL IT WAS ASSURED OF SUFFICIENT ACQUITTANCE IN THE EVENT THE NOTE SUBSEQUENTLY WAS DETERMINED TO BE COUNTERFEIT. THE VERY FACT THAT THE DISBURSING OFFICER CALLED THE BANK'S ATTENTION TO THIS NOTE INDICATES THAT SHE SUSPECTED IT WAS NOT GENUINE.

ACCORDINGLY, ON THE PRESENT RECORD, THE REQUESTED RELIEF CANNOT BE GRANTED PURSUANT TO THE APPLICABLE STATUTE.