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B-146142, Jun. 22, 1961

Number: B-146142

Date: 1961-06-22

B-146142, JUN. 22, 1961

TO THE SECRETARY OF THE INTERIOR:

ON JUNE 15, 1961, YOU REQUESTED OUR DECISION WHETHER YOU MAY ENGAGE A LIMITED NUMBER OF NATIONALS OF AFRICAN NATIONS FOR TEMPORARY EMPLOYMENT--- NOT TO EXCEED 60 DAYS--- IN THE NATIONAL PARK SERVICE OF THE DEPARTMENT OF THE INTERIOR.

SECTION 202 OF THE GENERAL GOVERNMENT MATTERS APPROPRIATION ACT, 1961, PUBLIC LAW 86-642, APPROVED JULY 12, 1960, WHICH YOU CITE, PROVIDES IN PERTINENT PART:

"UNLESS OTHERWISE SPECIFIED AND DURING THE CURRENT FISCAL YEAR, NO PART OF ANY APPROPRIATION CONTAINED IN THIS OR ANY 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) WHOSE POST OF DUTY IS IN CONTINENTAL UNITED STATES UNLESS SUCH PERSON (1) IS A CITIZEN OF THE UNITED STATES, (2) IS A PERSON IN THE SERVICE OF THE UNITED STATES ON THE DATE OF ENACTMENT OF THIS ACT WHO, BEING ELIGIBLE FOR CITIZENSHIP, HAD FILED A DECLARATION OF INTENTION TO BECOME A CITIZEN OF THE UNITED STATES PRIOR TO SUCH DATE, (3) IS A PERSON WHO OWES ALLEGIANCE TO THE UNITED STATES, OR (4) IS AN ALIEN FROM THE BALTIC COUNTRIES LAWFULLY ADMITTED TO THE UNITED STATES FOR PERMANENT RESIDENCE * * *. 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 CORRECT DEFENSE EFFORT, OR TO TEMPORARY EMPLOYMENT OF TRANSLATORS, OR TO TEMPORARY EMPLOYMENT IN THE FIELD SERVICE (NOT TO EXCEED SIXTY DAYS) AS A RESULT OF EMERGENCIES.'

SECTION 502 OF H.R. 7577, 87TH CONGRESS, ENTITLED THE GENERAL GOVERNMENT MATTERS, DEPARTMENT OF COMMERCE, AND RELATED AGENCIES APPROPRIATION ACT, 1962, CONTAINS SUBSTANTIALLY THE SAME LANGUAGE.

WHETHER THE INDIVIDUALS INVOLVED ARE NATIONALS OF COUNTRIES ALLIED WITH THE UNITED STATES IN THE CORRECT DEFENSE EFFORT DEPENDS, OF COURSE, UPON THE NATIONALITY OF EACH INDIVIDUAL. THE DETERMINATION TO BE MADE UNDER THAT EXCEPTION DEPENDS UPON POLITICAL CONSIDERATIONS AND AS SUCH IS A MATTER FOR THE DEPARTMENT CONCERNED WITH PERHAPS THE ASSISTANCE OF THE DEPARTMENT OF STATE. A DETERMINATION MADE UPON REASONABLE GROUNDS GENERALLY WILL NOT BE QUESTIONED BY US.

REGARDING THE EXCEPTION FOR "TEMPORARY EMPLOYMENT IN THE FIELD (NOT TO EXCEED SIXTY DAYS) AS A RESULT OF EMERGENCIES" HOUSE REPORT NO. 634, 84TH CONGRESS, OF THE COMMITTEE ON APPROPRIATIONS TO ACCOMPANY H.R. 6499, WHICH WAS ENACTED AS THE

GENERAL GOVERNMENT MATTERS APPROPRIATION ACT, 1956, 69 STAT. 192, DISCUSSES SECTION 202 OF THE BILL AS FOLLOWS:

"THIS SECTION CONTINUES A PROHIBITION ON THE EMPLOYMENT OF ALIENS IN THE CONTINENTAL UNITED STATES WITH CERTAIN EXCEPTIONS PREVIOUSLY CARRIED. ADDITION, TWO NEW AVENUES OF EXCEPTION HAVE BEEN ADDED, PERMITTING THE TEMPORARY EMPLOYMENT OF TRANSLATORS, AND THE TEMPORARY EMPLOYMENT OF PERSONS IN THE FILED SERVICE (FOR PERIODS NOT TO EXCEED SIXTY DAYS) TO COPE WITH EMERGENCIES SUCH AS FLOOD, FIRE OR OTHER CATASTROPHE. THE INCLUSION OF THESE EXCEPTIONS IN THE GENERAL LANGUAGE WILL PERMIT THE COMMITTEE TO DELETE SIMILAR PROVISIONS PRESENTLY CARRIED IN SEPARATE BILLS FOR THE DEPARTMENTS OF AGRICULTURE AND INTERIOR, AND IN SEPARATE SECTIONS OF OTHER BILLS.'

IN VIEW OF THE PURPOSE OF THE EXCEPTION IN QUESTION AS STATED IN THAT REPORT, WE FEEL THAT THE SITUATION PRESENTED BY YOU IS NOT AN EMERGENCY WITHIN THE MEANING OF SECTION 202 OF GENERAL GOVERNMENT MATTERS APPROPRIATION ACT, 1961.

THEREFORE, APPROPRIATED FUNDS ARE NOT AVAILABLE FOR COMPENSATING THE ALIENS IN QUESTION UNLESS IT BE DETERMINED THAT EACH INDIVIDUAL ALIEN WHO IS TO BE EMPLOYED IS A NATIONAL OF A COUNTRY ALLIED WITH THE UNITED STATES IN THE CURRENT DEFENSE EFFORT.