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B-151064, Mar. 25, 1963

Number: B-151064

Date: 1963-03-25

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TO THE HONORABLE LEONARD CARMICHAEL, SECRETARY, SMITHSONIAN INSTITUTION:

BY LETTER DATED MARCH 13, 1963, YOU REQUESTED OUR DECISION CONCERNING THE APPOINTMENT OF A SWEDISH NATIONAL TO THE POSITION OF GENERAL PHYSICAL SCIENTIST. YOU POINT OUT THAT THE GENTLEMEN IN QUESTION IS THE ONLY PERSON AVAILABLE FOR THE POSITION INASMUCH AS THE OTHER POSSIBLE CANDIDATES EITHER FAIL TO MEET THE SPECIFIC REQUIREMENTS FOR THE POSITION OR HAVE DECLINED THE OFFER OF APPOINTMENT.

YOUR DOUBT IN THE MATTER IS OCCASIONED BY THE FACT THAT NO SPECIFIC AUTHORITY FOR SUCH AN APPOINTMENT EXISTS AND BECAUSE SECTION 502 OF THE PUBLIC WORKS APPROPRIATION ACT, 1963, APPROVED OCTOBER 24, 1962, PUB.L. 87 -880, 76 STAT. 1227, 1228, CONTAINS A GENERAL PROHIBITION AGAINST THE USE OF APPROPRIATED FUNDS FOR THE PAYMENT OF COMPENSATION TO NONCITIZENS OF THE UNITED STATES. SECTION 502 OF PUB.L. 87-880 PROVIDES IN PERTINENT PART AS FOLLOWS:

"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 POLAND OR THE BALTIC COUNTRIES LAWFULLY ADMITTED TO THE UNITED STATES FOR PERMANENT RESIDENCE * * PROVIDED FURTHER, THAT ANY PAYMENT MADE TO ANY OFFICER OR EMPLOYEE CONTRARY TO THE PROVISIONS OF THIS SECTION SHALL BE RECOVERABLE IN ACTION BY THE FEDERAL GOVERNMENT. 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 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.'

UNDER THE LAST PROVISO OF THE ABOVE SECTION THE DETERMINATION AS TO WHETHER AN INDIVIDUAL IS A NATIONAL OF A COUNTRY ALLIED WITH THE UNITED STATES IS OF COURSE DEPENDENT, IN THE FIRST INSTANCE, UPON THE COUNTRY OF NATIONALITY. IN SIMILAR SITUATIONS WE HAVE VIEWED THE DECISION TO BE MADE AS ONE OF A POLITICAL NATURE FOR THE DETERMINATION OF THE AGENCY INVOLVED WITH PERHAPS THE ASSISTANCE OF THE DEPARTMENT OF STATE.

WE THEREFORE ARE NOT IN A POSITION TO ANSWER THE QUESTION SUBMITTED BUT POINT OUT THAT A DETERMINATION PREDICATED UPON REASONABLE GROUNDS WILL NOT BE QUESTIONED IN AN AUDIT BY THE GENERAL ACCOUNTING OFFICE.

WE ENCLOSE COPIES OF B-134230, NOVEMBER 18, 1957, AND B-146142, JUNE 22, 1961, WHICH MAY BE HELPFUL TO YOU IN THE MATTER.