Text as published on gao.gov, https://www.gao.gov/products/b-161976, archived 2026-07-17. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-161976, Aug. 10, 1967

Number: B-161976

Date: 1967-08-10

B-161976, AUG. 10, 1967

EMPLOYEES - ALIENS - PROHIBITION EXCEPTION DECISION TO COMMANDING OFFICER, NAVY REGIONAL FINANCE CENTER, RE VOUCHER FOR FINAL COMPENSATION AND LUMP SUM LEAVE TO EMPLOYEE, A CITIZEN OF CHINA, FOUND TO HAVE BEEN ILLEGALLY RESIDENT IN U.S. AN EMPLOYEE WHO WAS SEPARATED FROM THE SERVICE WHEN IT BECAME KNOWN THAT HE WAS A CITIZEN OF THE REPUBLIC OF CHINA WHICH FACT WAS UNKNOWN TO HIM BECAUSE OF HIS ENTRY TO THE U.S. IN 1940 AS A CHILD AND WHO BY REASON OF HIS SERVICE IN THE U.S. ARMY APPLIED FOR NATURALIZATION AND BECAME A CITIZEN MAY BE REGARDED AS BEING A CITIZEN OF THE REPUBLIC OF CHINA AS DISTINGUISHED FROM THE PEOPLE'S REPUBLIC OF CHINA SO AS TO COME UNDER THE EXCEPTION IN THE ALIEN EMPLOYMENT PROHIBITION FOR CITIZENS OF COUNTRIES ALLIED WITH THE U.S. AND, THEREFORE, IN VIEW OF ADVICE FROM CSC THAT THE EMPLOYEE'S SERVICE PRIOR TO NATURALIZATION WILL BE CREDITABLE FOR RETIREMENT AND FOR REEMPLOYMENT THE EMPLOYEE'S CONTRIBUTION TO THE CIVIL SERVICE RETIREMENT FUND WILL NOT BE DISTURBED, COMPENSATION AND LUMP SUM LEAVE PAYMENT DUE AT TIME OF SEPARATION MAY BE PAID.

TO CAPTAIN L. H. FRENCH, COMMANDING OFFICER, U.S. NAVY REGIONAL FINANCE CENTER:

YOUR LETTER OF JUNE 21, 1967, REFERENCE FA/7200, TRANSMITTED HERE THROUGH THE COMPTROLLER OF THE NAVY, REFERENCE NCFS-321, ENCLOSES A VOUCHER FOR $736.56 IN FAVOR OF MR. CALVIN J. Q. TONG, A FORMER CIVILIAN EMPLOYEE OF THE DEPARTMENT OF THE NAVY, COVERING FINAL COMPENSATION AND LUMP SUM LEAVE, AND REQUESTS OUR DECISION, APPARENTLY ON BEHALF OF A FINANCE OFFICER OF YOUR COMMAND, WHETHER THE VOUCHER LAWFULLY MAY BE PAID.

YOUR REQUEST STEMS FROM THE FACT THAT MR. TONG, AFTER HAVING SERVED AS A CIVILIAN EMPLOYEE SINCE JUNE 1959, WAS REPORTED ON MARCH 7, 1967, BY THE IMMIGRATION AND NATURALIZATION SERVICE TO BE A CITIZEN OF CHINA,"ILLEGALLY RESIDENT IN THE UNITED STATES.'

THE FILE REFLECTS THAT THE EMPLOYEE ENTERED THE UNITED STATES IN 1940 AT AGE 7, AND THAT HE SERVED IN THE U.S. ARMY FROM 1954 THROUGH 1956. YOU POINT OUT THAT THE EVIDENCE INDICATES THAT MR. TONG DID NOT KNOW HE WAS NOT A CITIZEN OF THE UNITED STATES. THE FACT OF HIS NON CITIZENSHIP APPEARS TO HAVE BEEN FIRST APPARENT SOMETIME SUBSEQUENT TO AND AS A RESULT OF HIS APPLICATION FOR A VISA PETITION FOR HIS WIFE IN OCTOBER 1966. THE IMMIGRATION AND NATURALIZATION SERVICE REPORTS THAT BECAUSE OF MR. TONG'S SERVICE IN THE ARMY HE WAS ELIGIBLE FOR NATURALIZATION UPON APPLICATION. ALSO, IT APPEARS THAT MR. TONG DID APPLY FOR CITIZENSHIP AND BECAME A CITIZEN OF THE UNITED STATES ON MAY 26, 1967. AS A CONSEQUENCE THE EMPLOYEE HAS BEEN OR IS ABOUT TO BE REEMPLOYED BY THE DEPARTMENT OF THE NAVY AFTER HAVING PREVIOUSLY RESIGNED ON APRIL 26, 1967, BECAUSE OF HIS QUESTIONED CITIZENSHIP.

ASIDE FROM THE QUESTION CONCERNING THE POSSIBLE APPLICATION OF OUR DECISION 15 COMP. GEN. 587, RELATING TO EMPLOYMENT OBTAINED BY FRAUDULENT MISREPRESENTATION--WHICH, ON THE FACTS, DOES NOT APPEAR TO APPLY TO MR. TONG--YOUR LETTER IMPLICITLY RAISES TWO OTHER QUESTIONS, VIZ. (1) WHETHER SECTION 502 OF THE PUBLIC WORKS APPROPRIATION ACT, 1967, PUB. L. 89-689, APPROVED OCTOBER 15, 1966, PRECLUDES THE USE OF THE NAVAL INDUSTRIAL FUND TO PAY THE SALARIES OF NONCITIZENS OF THE UNITED STATES AND (2) WHETHER SECTION 338.101, PAGE III-71, FEDERAL PERSONNEL MANUAL SUPPLEMENT 990-1, CIVIL SERVICE REGULATIONS, RENDERS INVALID MR. TONG'S EMPLOYMENT TO THE EXTENT THAT PAYMENT FOR PAST SERVICES IS UNAUTHORIZED.

THE NAVAL INDUSTRIAL FUND, ESTABLISHED UNDER 10 U.S.C. 2208, DERIVES SUPPORT FROM APPROPRIATIONS SUBJECT TO THE RESTRICTION IN SECTION 502, PUB. L. 89-689, CITED ABOVE. AMONG OTHERS, THAT SECTION EXCEPTS FROM ITS RESTRICTION CITIZENS OF COUNTRIES ALLIED WITH THE UNITED STATES IN ITS CURRENT DEFENSE EFFORT. THE PRIMARY RESPONSIBILITY FOR DETERMINATIONS AS TO COUNTRIES COVERED BY THE STATUTE AND ITS EXCEPTIONS DEVOLVES UPON THE AGENCIES WHOSE APPROPRIATIONS ARE TO BE OBLIGATED. 35 COMP. GEN. 216. APPEARS THAT MR. TONG AT THE TIME OF HIS ENTRY INTO THE UNITED STATES IN 1940 WAS A CITIZEN OF THE REPUBLIC OF CHINA AND THAT HE CONTINUED TO BE A NATIONAL OF THAT COUNTRY UNTIL HIS RECENT NATURALIZATION. WE BELIEVE IT IS COMMONLY ACCEPTED THAT THE REPUBLIC OF CHINA--AS DISTINGUISHED FROM THE PEOPLE'S REPUBLIC OF CHINA (COMMUNIST/--IS CONSIDERED TO BE ALLIED WITH THE UNITED STATES IN THE CURRENT DEFENSE EFFORT. WE ASSUME YOUR AGENCY CONCURS IN THAT VIEW. CONSEQUENTLY NATIONALS OF THAT COUNTRY COME WITHIN THE EXCEPTION TO THE PROHIBITION CONTAINED IN PUB. L. 89-689.

REPRESENTATIVES OF THE UNITED STATES CIVIL SERVICE COMMISSION HAVE INFORMALLY ADVISED US THAT THE COMMISSION UNDER SECTION 338 OF ITS REGULATIONS WOULD RAISE NO QUESTION CONCERNING THE VALIDITY OF MR. TONG'S PRIOR EMPLOYMENT IN VIEW OF HIS SUBSEQUENT NATURALIZATION AND THAT SUCH PRIOR SERVICE WOULD BE CREDITABLE FOR RETIREMENT AND OTHER PURPOSES. FURTHER, MR. TONG WOULD BE ELIGIBLE FOR REEMPLOYMENT WITHOUT AGAIN QUALIFYING FOR THE COMPETITIVE SERVICE. YOU MAY WISH TO CONFIRM THESE MATTERS BY APPROPRIATE CONTACT WITH THE COMMISSION.

IN THE LIGHT OF THE FOREGOING AND IN RESPONSE TO A SPECIFIC QUESTION IN YOUR LETTER, WE ARE OF THE VIEW THAT MR. TONG'S CONTRIBUTIONS TO THE CIVIL SERVICE RETIREMENT FUND WERE PROPER AND NEED NOT NOW BE DISTURBED. ALSO, WE CONCLUDE THAT THE VOUCHER FOR $736.56, COVERING COMPENSATION FOR THE PERIOD APRIL 10 TO APRIL 26, 1967, AND A LUMP SUM PAYMENT FOR ACCUMULATED LEAVE, IF OTHERWISE CORRECT, LAWFULLY MAY BE PAID.