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**GAO**

United States General Accounting Office  
Washington, DC 20548

Office of  
General Counsel

In Reply  
Refer to: **B-196855**

DEC 18 1979

William Fliegelman, Esq.  
Barst & Mukamal  
Counsellors at Law  
127 John Street  
New York, NY 10038  
D5524

Dear Mr. Fliegelman:

This is in response to your letter of November 12, 1979, with enclosures, [requesting relief] in the amount of \$1,000 charged against Ms. Joan Emil, Alternate Cashier, Immigration and Naturalization Service (INS), Department of Justice, for a loss which was attributed to her failure to count all the money she received on January 29, 1979. 86

We note from the file which you enclosed with your letter that the INS Assistant Regional Commissioner wrote to you on September 12, 1979, suggesting that Ms. Emil appeal to the General Accounting Office (GAO) for relief from accountability for the \$1,000. I am afraid his advice was erroneous, as far as a request for relief is concerned. The GAO has no authority to grant relief to an accountable officer, no matter how meritorious the officer's case may be, unless the head of the employing agency (or his delegee) first requests relief on the officer's behalf, and makes the findings set forth in 31 U.S.C. 82a-1 (1976), to the effect that the officer was acting in the scope of his employment at the time the loss occurred, and that the loss is not attributable to any negligent act or deficiency on the part of the officer. Such findings are a statutory prerequisite, and we will not even consider the merits of a physical loss of funds case without them. Once the findings are received, our Office can then consider whether we agree with the findings and are thus able to grant relief.

In this instance, the INS has determined that the loss occurred due to Ms. Emil's negligence, and, as it is required to do so by 5 U.S.C. 5512, it has set her up in debt and proceeded to collect the sum due to the United States. This is



37

Federal employees  
Personal liability  
Currency losses  
Debt collection  
Government  
Collection  
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B-196855

2 the section quoted by the Assistant Regional Commissioner in his letter to you of October 11, 1979. Please note that pursuant to subsection (b) if Ms. Emil or you, as her attorney, so request, the GAO will report the balance due to the United States to the Attorney General. The Attorney General is then required to order a suit to be brought against Ms. Emil within 60 days, thus affording her an opportunity for judicial review of the INS' determination. If you wish us to proceed in this manner, please let us know.

Sincerely yours,

MILTON SOCOLAR

Milton J. Socolar  
General Counsel