

PLM-1

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

10,528

FILE: B-194929 *personal name*

DATE: June 20, 1979

MATTER OF: Ada Gershen - Legality of Employment of Alien

DIGEST: Although Public Law 95-429 prohibits use of appropriated funds to pay compensation of noncitizens, the statute contains an exception for nationals of Poland lawfully admitted to the United States for permanent residence. The exception is not negated when the alien has dual nationality status. Therefore, a citizen of Poland, who is also a citizen of Israel, may be appointed and paid by St. Elizabeth's Hospital in its Residency Intern Program.

The sole issue in this case is the applicability of the Appropriation Act restrictions on paying compensation to non-United States citizens to a person ~~having~~ *with* dual citizenship.

CN 501188

The Honorable Thomas S. McFee, Assistant Secretary for Personnel Administration, Department of Health, Education, and Welfare (HEW), has requested an advance decision on whether St. Elizabeth's Hospital may appoint a foreign national, Ada Gershen, M.D., to a position in its Residency Intern Program. Dr. Gershen is a citizen by birth of Poland and is also a citizen of Israel. She entered the United States in November 1978, on an Israeli passport, which stated as follows: "Temporary evidence of lawful admission for permanent residence, valid until August 21, 1979. Employment Authorized." For purposes of this decision, we assume that Dr. Gershen's status continues to be that of a person lawfully admitted to the United States for permanent residence.

The Assistant Secretary specifically asks whether the fact that Dr. Gershen entered the United States from Israel as an Israeli citizen negates the application of the exception to the statutory restriction permitting the employment of aliens from Poland lawfully admitted to the United States for permanent residence.

Section 602 of the Treasury, Postal Service, and General Government Appropriation Act, 1979, Public Law 95-429,

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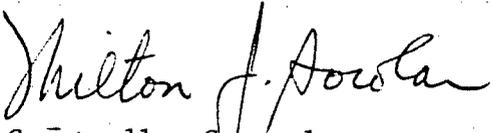
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October 10, 1978, 92 Stat. 1015 (31 U.S.C. § 699b), provides in essence that no part of any appropriation shall be used to pay the compensation of any officer or employee whose post of duty is in the continental United States unless the person is a citizen of the United States, or meets one of the other specified exceptions in the statute. The fourth exception in section 602 permits the payment of compensation to a person who "(4) is an alien from Cuba, Poland, South Vietnam, or the Baltic countries lawfully admitted to the United States for permanent residence."

Since HEW advises us that Dr. Gershen is a citizen of Poland by birth and that she has been lawfully admitted to this country for permanent residence, she obviously satisfies the conditions of the fourth exception in section 602. We find nothing in the statute or its legislative history to suggest that dual citizenship or entry from another country would negate the exception. Thus, Dr. Gershen's Israeli citizenship and her entry into the United States from Israel do not disqualify her from satisfying the fourth exception for Polish citizens.

We, therefore, conclude that ^{the} hiring and compensation of Dr. Ada Gershen for the Residency Intern Program at St. Elizabeth's Hospital would not conflict with the Appropriation Act restriction on the employment of aliens by the Federal Government.


for the Comptroller General
of the United States