

# DECISION



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

30030

FILE: B-215118

DATE: December 18, 1984

MATTER OF: Claim of Hai Tha Truong

## DIGEST:

1. A claim which arises from an action taken by the Agency for International Development during a time of combat, and not from the noncombat activities of the United States Armed Forces or its members or civilian employees, is not cognizable under the Military Claims Act, 10 U.S.C. § 2733, or the Foreign Claims Act, 10 U.S.C. § 2734. However, it would be cognizable under GAO's general claims settlement authority, 31 U.S.C. § 3702, had not the 6 year statute of limitations specified in that section run.
2. The 6-year period of limitations in 31 U.S.C. § 3702 was not tolled for the 4 years that claimant was living in Socialist Republic of Vietnam and may have been prevented from bringing suit. Consistent with the Supreme Court's construction of the Court of Claims 6-year statute of limitations, Soriano v. United States, 352 U.S. 270, 273 (1975), this Office should construe the 6-year period of limitation in section 3702 strictly.

The Agency for International Development (AID) asked this Office for an advance decision about its liability for the \$991,126.50 claim of Mr. Hai Tha Truong, a Vietnamese refugee. Of this amount, only a portion (\$53,573.40) represents losses directly attributable to alleged actions by the United States. The remainder of the claim is for damages Mr. Truong suffered when his letter of credit, factory, equipment, and materials were seized by the Government of Vietnam and he was forced to pay a fee to leave Vietnam. We do not see any connection between these consequential losses and the actions by the United States of which Mr. Truong complains. Therefore, we limit our consideration to the first part of the claim.

The claim arose from loss of goods carried on two ships, both of which were diverted from Vietnam because of the American evacuation from that country in April 1975. For the reasons given below, we find that the claim is barred by the

030824

statutes of limitations in the various laws that could form a basis for Mr. Truong's claim. Accordingly, the claim is denied.

#### A. Background

According to AID, Mr. Truong's claim arose from his participation in the Commodity Import Program, a program established by grant agreement between the United States and the former Government of Vietnam. AID informs us that under that program, importers, such as Mr. Truong, put down 25 percent of the purchase price in Vietnamese piasters with the Central Bank of Vietnam for goods to be imported into that country. The bank then would loan the other 75 percent to the importer, who, in turn, would establish a letter of credit for payment for the goods. Correspondingly, in the United States, AID provided complete financing in dollars to the supplier of the goods by depositing funds in an American bank. After the goods were shipped, the supplier was paid by the bank. The monies deposited by Mr. Truong were put into a special account pursuant to section 609 of the Foreign Assistance Act, 22 U.S.C. § 2359. The money was used for United States and Vietnamese government programs.

Based on the material presented, it appears that Mr. Truong ordered a quantity of acetate filament yarn and three tricot knitting machines at a cost of some \$50,000. These goods were shipped from the United States to South Vietnam on two ships. However, due to the American evacuation both ships were diverted from Saigon in April 1975. AID states that in accordance with the grant agreement and the procedures under the Commodity Import Program, the goods were sold at auction either in Malaysia or Indonesia and the proceeds were deposited into the Treasury as miscellaneous receipts.

Mr. Truong remained in the Socialist Republic of Vietnam until early 1979. He states that at that time he was allowed to purchase the right for himself and his family to immigrate to Indonesia at a price of \$40,000, and that he reached Indonesia in June 1979. It appears that he immigrated to Canada a year later where he now is a permanent resident.

By letter of December 28, 1982, Mr. Truong informed Congressman Peter J. Rodino of his claim. Soon thereafter, Mr. Rodino referred the claim to the Secretary of the Army who, in turn, referred it to the Navy as that department had been assigned single service responsibility for processing claims against the United States for loss or damage to property in Vietnam. The claim, originally for over a million dollars, sought not only compensation for the yarn, the knitting machines and the related shipping charges, but also

for the confiscation of Mr. Truong's letter of credit and his factory, equipment and materials, as well as his \$40,000 emigration expense.

The Navy viewed the Military and Foreign Claims Acts, 10 U.S.C §§ 2733, 2734, as possible bases for the claim. Nevertheless, the Navy suggested that the losses were not compensable under either Act since (1) the 2-year statute of limitations in both appeared to bar the claim, and (2) the losses did not appear to have been sustained incident to the noncombat activities of the United States Armed Forces. The Navy then forwarded the claim to AID on the basis that it arose from a commodity credit transaction. Subsequently, in May 1984, AID submitted the claim to us for an advance decision. On September 10, 1984, AID agreed that we would decide the claim. Aside from the statute of limitations issue, in its submission to us, AID presented numerous substantive arguments essentially maintaining that Mr. Truong's participation in the Commodity Import Program precludes his recovering any money for the lost yarn and sewing machines.

#### B. Legal Discussion

Mr. Truong asserts his claim under both the Military and Foreign Claims Acts. Assuming arguendo that the 2-year statutes of limitations in those acts were tolled until Mr. Truong reached Canada in June 1980, his filing a claim in late 1982 or early 1983 still would have exceeded the 2-year period allowed by those acts for filing claims. In any event, as suggested by the Navy, Mr. Truong's claim is not cognizable under either of those statutes. Both cover loss of personal property caused by the noncombat activities of the armed forces or by a member or civilian employee of the armed forces. Id. §§ 2733(a), 2734(a); see S. Rep. No. 243, 78th Cong., 1st Sess. 2 (1943); H. Rep. No. 312, 78th Cong., 1st Sess. 4 (1943). In this instance, the loss occurred as a result of AID rather than the armed forces diverting ships from Vietnam.

Assuming, therefore, that neither the Military Claims Act nor the Foreign Claims Act applies, Mr. Truong's claim would be cognizable under this Office's authority to settle claims against the United States, 31 U.S.C. § 3702(a). That raises the issue of whether his claim would be barred by the 6-year period of limitation set forth in section 3702. The issue turns on whether the statute ran or was tolled during the 4-year period that Mr. Truong lived in the Socialist Republic of Vietnam--April 1975 to early 1979.

Section 3702 of title 31 requires that a claim "be received by the Comptroller General within 6 years after the claim accrues except--(A) as provided in this chapter or another law \* \* \*." Id. § 3702(b)(1). It allows an extension of the 6-year period for claims of members of the armed forces that accrue during war or within 5 years before war begins, or up to 5 years after peace is established. Id. § 3702(b)(2).

We have held that we are without authority to waive or modify application of the 6-year period. E.g., B-190841, February 15, 1978. Applying the statute strictly is consistent with the Supreme Court's construction of the Court of Claims 6-year statute of limitations, 28 U.S.C. § 2501, and, by implication, other statutes of limitations pertaining to actions brought against the United States. Thus, in Soriano v. United States, 352 U.S. 270 (1957), the Court rejected the plaintiff's contention that hostilities with the Japanese tolled the statute and limited the exceptions to the 6-year period to those provided in the statute--"claims filed by persons under a legal disability or beyond the seas at the time the claim accrued."<sup>1/</sup> The Court reasoned:

"To permit the application of the doctrine urged by petitioner would impose the tolling of the statute in every time-limit-consent Act passed by the Congress \* \* \*. Strangely enough, Congress would be required to provide expressly in each statute that the period of limitation was not to be extended by war. But Congress was entitled to assume that the limitation period it prescribed meant just that period and no more. With this intent in mind, Congress has passed specific legislation each time it has seen fit to toll such statutes of limitations because of war. And this Court has long decided that limitations and conditions upon which the Government consents to be sued must be strictly observed and exceptions thereto are not be implied." Id. at 275-76.

On the other hand, there is a line of cases supporting the view that the 6-year period of limitation either never began to run or was tolled for the time that Mr. Truong lived in the Socialist Republic of Vietnam. Thus, it is generally held that whenever some paramount authority prevents a person

<sup>1/</sup> The statute allowed and still allows for an additional 3 years after the disability ceases.

from exercising a legal remedy, the time during which the person is thus prevented is not to be counted in determining whether a statute of limitations has barred the right.<sup>2/</sup> Braun v. Sauerwein, 77 U.S. (10 Wall.) 218 (1869); Yoder v. Nu-Enamel Corp., 145 F.2d 420, 427 (8th Cir. 1944); see B-200402,<sup>3/</sup> November 6, 1981. In Braun, the Supreme Court held that a Maryland 3-year statute of limitations was tolled for the period an Act of Congress prevented a plaintiff from suing. In this regard, it found that the "running of a statute of limitation may be suspended by causes not mentioned in the statute itself." The Court noted with approval its decision in Hanger v. Abbott, 73 U.S. (6 Wall.) 532, 540-42 (1867), and decisions in various state courts, that statutes of limitations in the confederate civil war states were tolled while the courts of those states were closed by the war. It stated that those decisions "all rest on the ground that the creditor has been disabled to sue, by a superior power, without any default of his own, and therefore, that none of the reasons which induced the enactment of the statutes apply to his case \* \* \*." 77 U.S. at 222.

Notwithstanding Braun and Hanger, we think Soriano governs Mr. Truong's claim. In Soriano, the Court specifically distinguished Hanger stating that Hanger

<sup>2/</sup> It would appear that the paramount authority argument is strengthened by the principle that both governments that are not recognized by the United States, and citizens of those governments, do not have access to United States courts. Pfizer Inc. v. India, 434 U.S. 308, 319-20 (1978); Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 409 (1964). In this regard, the United States Court of Appeals for the Second Circuit has held that a New York 6-year statute of limitations was tolled for the period during which the United States did not recognize the German Democratic Republic. Kunstsammlungen Zu Weimar v. Elicofon, 678 F.2d 1150, 1164 (2d Cir. 1982), aff'g, 536 F. Supp. 829, 847 (E.D.N.Y. 1981). As we understand it, the Socialist Republic of Vietnam still is not recognized by the United States.

<sup>3/</sup> We suggested in B-200402, November 6, 1981, also a claim involving a Vietnamese refugee, that the statute could have been tolled by a Vietnamese court order effectively precluding the United States Army from paying what was owed the claimant. Nonetheless, the principal basis for our finding that the statute had not run was that we could not determine precisely when the cause of action accrued.

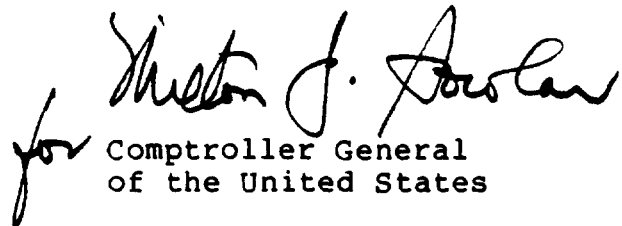
B-215118

pertained only to decisions between private litigants but "has no applicability to claims against the sovereign." 352 U.S. at 275.

Our claims statute not only provides a forum for bringing claims against the United States, but its legislative history shows that the earlier 10-year period was changed to 6 years, among other reasons, to conform it with that for the Court of Claims and United States courts. H.R. Rep. No. 1300, 93d Cong., 2d Sess. 12-13 (1974); S. Rep. No. 1314, 93d Cong., 2d Sess. 5-6 (1974). Thus, the holding in Soriano would likewise apply to our limitations period.

Consistent with our analysis, as the exception to the 6-year period of limitations set forth in our claims statute, that for members of the United States Armed Forces, does not apply to Mr. Truong, the 6-year period of limitation would not have been tolled for the 4 years he lived in the Socialist Republic of Vietnam and, arguably, was precluded from bringing a claim.<sup>4/</sup> Thus, as Mr. Truong's claim arose in April 1975, the time when his goods were diverted from Vietnam, filing of the claim in this Office some 9 years later, in May 1984, conflicts with the 6-year period provided.

As we have held that the 6-year period of limitation in section 3702 is not a mere statute of limitations, but is a condition precedent to the right to have the claim considered by our Office, B-148496, April 10, 1962, it follows that there is no reason to comment on the substantive issues raised.

  
for Comptroller General  
of the United States

---

<sup>4/</sup> Although the facts submitted to us are not conclusive on this point, it is uncontroverted that Mr. Truong's factory was confiscated either by the Viet Cong or by the government of the Socialist Republic of Vietnam, and that he had to pay \$40,000 so that he and his family could emigrate from Vietnam.