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

[Request by Foreign Service Employee for Home Leave in Panama Canal Zone]

FILE: B-199532 DATE: August 21, 1980

MATTER OF: Nereida M. Vazquez - Home leave

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AGC00031

DIGEST: Department of State Foreign Service employee requests home leave in Panama Canal Zone. Home leave may not be authorized in Canal Zone since home leave may only be granted in continental United States or its territories and possessions and Panama Canal Treaty of 1977, effective October 1, 1979, provides that Republic of Panama has full sovereignty over Canal Zone. Since home leave for purposes of "re-Americanization" is compulsory under 22 U.S.C. 1148, employee should designate an appropriate location for this purpose.

The Department of State requests a decision regarding whether one of its Foreign Service personnel serving overseas, Nereida M. Vazquez, may take home leave in the Panama Canal Zone. Since home leave may only be authorized in the United States or its territories and possessions, Ms. Vazquez may not be authorized home leave in the Canal Zone which became part of the Republic of Panama under the Panama Canal Treaty of 1977, effective October 1, 1979. She must, however, be granted home leave in an appropriate place within the United States or its territories and possessions.

On or about January 3, 1978, Ms. Vazquez became an employee of the Department of State, Foreign Service. Prior to reporting to her overseas duty post in Rome, Italy, she filled out a Department of State biographical data form indicating, among other things, that her legal residence at the time of employment was Arlington, Virginia; her home leave residence would be the Panama Canal Zone; and her residence for service separation would be Washington, D.C., or Arlington, Virginia. The record reveals that Ms. Vazquez' designation of the Panama Canal Zone for home leave was because she was born there and lived there with her immediate family until she attended college in the Washington, D.C., area and subsequently became an employee of the Department of State.

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Having completed approximately 2 years of overseas service, Ms. Vazquez was eligible for home leave and was asked to fill out the official form for agency processing. Again, as in her biographical data form, Ms. Vazquez indicated she wished to take home leave in the Canal Zone. She also changed her legal residence and residence for service separation to the Canal Zone. Ms. Vazquez signed this form on January 4, 1980.

On June 2, 1980, some 2 months before Ms. Vazquez' scheduled home leave, the Department of State informed her that she could not designate the Canal Zone as her home leave residence. The reason given was that the applicable Department of State regulations only authorized an employee to take home leave in the United States, the Commonwealth of Puerto Rico, or territories or possessions of the United States. The employee was advised to change her residence for home leave.

Ms. Vazquez did not designate a new residence for home leave as she felt she could not meet the criteria set forth for such a change in the applicable agency form. Specifically, the form stated that:

> "* * * Your designation [of a home leave residence] must show a definite family tie or other compelling interests rather than merely a desire to visit a particular location and/or relative or for travel for personal convenience. When you change your home leave residence, you must indicate (in block 10) the specific reason for your choice of the location and your intent for its future permanent use. * * *"

Ms. Vazquez filed a grievance with the agency and the grievance staff proposes to allow her to take home leave in the Canal Zone. We are informed that this decision is based on Department error in not informing Ms. Vazquez more expeditiously of the noneligibility of the Canal Zone and because the Canal Zone is the only place which would meet the standards set forth above for designation of a home leave residence.

Foreign Service personnel's entitlement to home leave arises from the Foreign Service Act of 1946, c. 957, Title IX, Part D, Section 933(a), 60 Stat. 1028, as amended, 22 U.S.C. 1148 (1976). It provides that:

> "(a) The Secretary [of State] may order to the continental United States, its territories and possessions, on statutory leave of absence any officer or employee of the Service who is a citizen of the United States upon completion of eighteen months' continuous service abroad and shall so order as soon as possible after completion of three years of such service." (Emphasis supplied.)

The statute is clear on its face and expressly states that home leave may only be taken in the United States or its territories and possessions. Leave of absence for this purpose accrues under 5 U.S.C. 6305 which similarly provides for the granting of home leave for use in the United States, "its territories or possessions." Implementing regulations consistent with this express statutory limitation are found in Volume 3 of the Foreign Affairs Manual (3 FAM), Section 454.5-1 (August 13, 1968). Travel expenses for home leave purposes are payable under the related authority of 22 U.S.C. 1136.

Prior to October 1, 1979, there is no question that Ms. Vazquez would have been entitled to take home leave in the Canal Zone as it was considered to be a territory or possession of the United States for home leave purposes. See 53 Comp. Gen. 966, 970-971 (1974). On October 1, 1979, the Panama Canal Treaty went into effect and under its provisions the Republic of Panama regained full sovereignty over the Canal Zone. Therefore, the Canal Zone can no longer be considered a territory or possession of the United States.

Because of this change in status of the Canal Zone, the area no longer can be considered a place which an individual can designate as a residence for home leave.

Thus, Ms. Vazquez may not be authorized to travel to the Canal Zone for home leave. While the situation is regrettable, no other result can be reached in view of the express language of 22 U.S.C. 1148.

We have examined the legislative history of 22 U.S.C. 1148 to see if it is consistent with that conclusion. Home leave was authorized by Congress so that a "re-Americanization" of Foreign Service personnel could be accomplished by having them "renew their knowledge of developments in the United States and their feelings for the American way of life." H. Rept. No. 2508, 79th Cong., 2d Sess., p. 10 (July 12, 1946), accompanying H.R. 6967 which became the Foreign Service Act of 1946 referred to previously. Thus, the purpose of home leave is to assure that the employee is "re-Americanized" and not merely to enable him to visit with friends and family. Home leave in the Republic of Panama would be inconsistent with this concept of "re-Americanization."

As a possible basis to authorize Ms. Vazquez' home leave, we have also examined the applicable provisions of the Panama Canal Treaty (Article XI) and the Panama Canal Act of 1979 Pub. L. 96-70, Title II, §§ 2101 et seq., which provide for a transition period of 30 months for certain functions. Our examination of the treaty and the enabling legislation reveals that the Republic of Panama is immediately vested with full sovereignty over the Canal Zone but that the United States retains certain of its law enforcement and judicial functions for 30 months to enable an orderly transition. Except for these limited functions, the Republic of Panama has plenary jurisdiction over the Canal Zone and the Canal Zone is clearly part of the Sovereign Republic of Panama. See the Department of State, Selected Documents, No. 6C, January 1978, "The Meaning of the New Panama Canal Treaties," for a discussion of this and other points of interest regarding the treaty. Therefore, the treaty and statutory provisions for transition do not provide a basis to treat the Canal Zone as a United States possession for purposes of 22 U.S.C. 1148 and 5 U.S.C. 6305.

In deciding that Ms. Vazquez may not be authorized home leave in the Canal Zone, we do not hold that she is precluded from being authorized home leave. The home leave provisions of 22 U.S.C. 1148 are compulsory. See Hitchcock v. Commissioner, 578 F. 2d 972, 973 (4th Cir. 1978). Accordingly, Ms. Vazquez is entitled to home leave and indeed failure to provide her with this leave would be violative of the compulsory provisions of the statute.

Under 3 FAM, section 124.3a(2) (May 8, 1970), a change in home leave address should be supported by a showing of definite family ties or "other compelling interests" rather than merely a desire to visit a particular location. We believe that a change of home leave address by Ms. Vazquez, under the circumstances of this case, which indicates her reasons for wishing to spend her time there for "re-Americanization" would be allowable. In this regard we note that Ms. Vazquez' original Biographic Data Sheet listed Arlington, Virginia, as her legal residence and residence for service separation. While her subsequent form of January 4, 1980, changing this to the Canal Zone cannot be recognized the designation of some location in the United States, such as Arlington, would appear to be permissible in the circumstances of this case. See generally 3 FAM, Section 124.3 (May 8, 1978), particularly subsections 114.3b(1 and 3); and 6 FAM, Section 125.9 (October 8, 1974).

Accordingly, while Ms. Vazquez may not be authorized home leave in the Canal Zone she should designate an appropriate home leave residence for "re-Americanization" purposes.

Harry R Van Cleve

For the Comptroller General
of the United States