

DECISION

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

Supplemental
120.66

FILE: B-208340

DATE: November 29, 1982

MATTER OF: Malcolm H. Churchill

DIGEST: Dependents' travel from Australia to Manila on a foreign air carrier to visit ailing grandparents en route to home leave in the United States constitutes indirect travel that caused loss of revenue for U.S. air carriers available on a direct route to the home leave destination in violation of the Fly America Act. Because home leave travel is not authorized for the purpose of visiting relatives, but for "re-Americanization," use of foreign air carrier by way of Manila cannot be justified on the basis that direct travel by U.S. air carrier would interfere with the accomplishment of an essential mission.

Malcolm H. Churchill, an employee in the foreign service of the Department of State, appeals our Claims Group's denial of reimbursement for dependent travel from Australia to the Philippines on a foreign air carrier in connection with his family's travel on home leave. The question in this case is whether expenditures for foreign air carrier transportation must be disallowed under 49 U.S.C. 1517 (Fly America Act) where U.S. air carrier service was available by direct route and where the indirect travel that resulted in the use of a foreign air carrier was for the purpose of enabling the employee's children to visit their ailing grandparents en route to their home leave destination in the United States. Since home leave travel is not specifically authorized for the purpose of visiting relatives, the dependents' travel by way of the Philippines must be regarded as travel by indirect route. Their travel, therefore, was correctly found to have been in violation of the Fly America Act.

Pursuant to a travel authorization granting home leave in combination with a transfer from Canberra, Australia, to Washington, D.C., Mr. Churchill sent his son and daughter from Canberra to Manila to visit their grandparents who were in poor health. From Manila the

children traveled to Rockford, Illinois, where they stayed about a week, and then traveled to Black Mountain, North Carolina, their father's home leave destination. From there they traveled with their father to his new duty station in Washington.

On the basis that their travel had been indirectly routed, the Department of State, as well as our Claims Group, denied reimbursement of the children's air fare from Australia to Manila by foreign air carrier. The Department contends that the Fly America Act and its implementing regulations at 6 Foreign Affairs Manual (FAM) 134.3 preclude reimbursement, even though there are no U.S. air carriers scheduled from Australia to Manila. Mr. Churchill contends that since one of the purposes of home leave travel is the reuniting of families, his children's travel by way of Manila at no increase in overall cost should not be considered travel by indirect route but should be regarded as an "essential mission." He points out that for married employees the home leave address is often the residence of one set of parents and the employee and his or her dependents can often indirectly route their travel at no additional cost in order to visit both sets of parents while on home leave. He refers to the fact that the Fly America Act has been amended and suggests that its application to disallow expenses for his children's travel defeats an "essential mission" of home leave.

Under the Fly America Act we have held that the Department of State should properly collect from a traveler under the Act the loss of revenues by U.S. air carriers due to indirect travel and have approved formulas for calculating this revenue loss. Matter of Thompson, 56 Comp. Gen. 209 (1977). State relies on that principle as reflected in 6 FAM 134.3 and the explanatory examples in 6 FAM 134.6 to deny reimbursement for Mr. Churchill's dependents' travel between Australia and Manila on a foreign air carrier. Had the children not taken the indirect route through Manila to the designated home leave destination in North Carolina, there would have been no loss of revenue to the U.S. air carriers available on the direct route.

As Mr. Churchill has noted, the Fly America Act has been amended to add a new section 1518 to title 49 of the U.S. Code. That section makes the use of foreign air carrier service between two points outside the United States a matter of discretion for certain agencies, including the Department of State. See Matter of Keller, B-200279, November 16, 1981. That amendment, however, has no effect on State's regulations requiring disallowance for the loss of revenues by U.S. air carriers due to indirect travel or on the principles governing travel originating or terminating in the United States, such as Mr. Churchill's and his dependents' home leave travel from Australia to North Carolina.

Mr. Churchill concedes that one purpose of home leave is "re-Americanization," or renewal of knowledge of developments in the United States and feelings for the American way of life. But he argues that reuniting of families, especially in times of serious illness, is also a congressionally contemplated purpose of home leave. Given this purpose, he contends that the reunion of his children and their grandparents in Manila is an "essential mission" in the contemplation of 6 FAM 134.2 (c)(1), which permits the use of foreign air carriers where U.S. air carriers "would interfere with the accomplishment of an essential mission." We have made clear that the purpose of home leave is re-Americanization; that re-Americanization must take place within the United States or its territories and possessions; and that when the reuniting of a family cannot take place within the United States or its territories and possessions, it may not be used as the basis for home leave. Matter of Vazquez, 59 Comp. Gen. 671 (1980). Therefore, family reunion in the context of home leave travel is not an "essential mission" that would itself justify the use of foreign air carriers. Although some employees may be able to indirectly route home leave travel to visit relatives at no additional cost, that benefit is fortuitous and merely incidental to the purpose of home leave.

Since the children's home leave travel by way of Manila to North Carolina was indirect travel which caused loss of revenue for U.S. air carriers available

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on the direct route, the Department of State and our Claims Group correctly determined that a disallowance is required under the Fly America Act. However, it appears that Mr. Churchill has been disallowed the full amount of their air fare between Australia and the Philippines. The amount to be disallowed should be determined according to the mileage proration formulas in 6 FAM 134.6.

Accordingly, we sustain our Claims Group's denial of reimbursement for indirect travel on a foreign air carrier, the amount to be determined by the applicable regulations.

for 
Comptroller General
of the United States