DECISION

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

27280

FILE: B-212316 DATE: January 25, 1984

MATTER OF: Mohammed Amin Fekrat

DIGEST:

1. An employee of United States Information Agency who traveled from Tehran, Iran, to Washington, D.C., in February 1980 and who was first employed by the Agency in September 1980 in a manpower shortage position is not entitled to reimbursement of his travel expenses from Iran since his travel was not related to his selection for employment some 6 months later.

2. Employee may not be allowed payment of transportation expenses and per diem for his family members for travel from Tehran, Iran, to the Washington, D.C. area where there is an unexplained discrepancy between the period of travel shown on the voucher and the tickets submitted by the employee in support of that voucher. Furthermore, the record does not establish that appropriate agency officials properly determined that Iran was the employee's place of residence at the time of his selection for employment.

This decision concerns whether Mr. Mohammed Amin Fekrat, an International Radio Broadcaster with the United States Information Agency, may be allowed reimbursement for transportation expenses and per diem for himself and his dependents, including his sister-in-law, for travel from Tehran, Iran, to the Washington, D.C. area in connection with his employment in a shortage category position.[1] No part of the employee's claim may be allowed on the basis of the record before us.

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[1]This matter comes before us pursuant to a request for an advance decision by Ms. Esther L. Grant, an authorized certifying officer of the United States Information Agency.

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The record shows that Mr. Fekrat was initially employed by the Agency as an International Radio Broadcaster (Persian) effective September 29, 1980, under a personal services contract for the 90-day period ending December 28, 1980. Upon the expiration of the contract Mr. Fekrat received an excepted appointment as a broadcaster not to exceed March 28, 1982. His appointment was extended to September 28, 1983, and apparently has been extended further.

By travel authorization dated October 12, 1982, the Agency authorized Mr. Fekrat and his family tourist class air travel from Tehran, Iran, to Washington, D.C. In addition, the Agency authorized per diem for Mr. Fekrat and his family incident to such travel, including 17 days' per diem in Zurich, Switzerland, for the purpose of obtaining entry visas into the United States. In addition to Mr. Fekrat's wife and three minor children, the authorization provided for transportation and per diem for his sister-in-law.

On his travel voucher, Mr. Fekrat shows that he began travel on February 6, 1980, and arrived in the Washington, D.C. area on that same day. The voucher also shows that the members of the employee's family and his sister-in-law departed Tehran on July 21, 1981, and arrived in Zurich, Switzerland, later that day. It shows that they departed Zurich on August 6, 1981, and arrived at their residence in the Washington, D.C. area the following day, August 7, 1981.

Mr. Fekrat has claimed a total of $4,935 for the costs of air travel for himself, his family and his sister-in-law. In addition, he claims per diem for himself for 17 days in the total amount of $1,360 and per diem in the amount of $5,440 for the same number of days for his family and sister-in-law. Thus, the total per diem claimed is in the amount of $6,800. Lastly, he requests payment in the amount of $2,120 for "excess baggage."

The certifying officer disallowed Mr. Fekrat's claim for his own transportation and per diem costs on the basis that his travel was for personal reasons, having been performed more than 6 months before his employment by contract dated September 29, 1980. The claim for reimbursement of transportation expenses of his wife and children was disallowed because of irregularities surrounding the claim,

including the fact that some of the air travel tickets were issued in May and June of 1982 for travel that Mr. Fekrat claims was performed in July and August of 1981. Furthermore, the travel was performed on a foreign flag air carrier. The per diem claim for the employee's family was disallowed on the basis that the Federal Travel Regulations (FPMR 101-7) do not authorize per diem allowances for the immediate family of new appointees. Lastly, Mr. Fekrat's claim for reimbursement of his sister-in-law's travel and transportation expenses was disallowed since a "sister-in-law" is not a member of an employee's "immediate family" as defined in the Federal Travel Regulations for purposes of entitlement to payment of transportation and travel expenses.

Copies of Standard Forms 50, Notification of Personnel Action, show that Mr. Fekrat's initial employment under a personal services contract and his subsequent temporary excepted appointments were made pursuant to section 804(1) of the United States Information and Educational Exchange Act of 1948 (Act), as amended, 22 U.S.C. § 1474(1), which gives the U.S. Information Agency authority to:

> "* * * employ, without regard to the civil service and classification laws, aliens within the United States and abroad for service in the United States relating to the translation or narration of colloquial speech in foreign languages * * *."

Section 804(2) of the Act, 22 U.S.C. § 1474(2), provides authority to pay the travel expenses of aliens employed abroad for service in the United States and their dependents to and from the United States. Since Mr. Fekrat was in the United States at the time of his initial employment by the Agency section 804(2) of the Act does not provide authority to pay his or his family's travel expenses.

The Agency has indicated that the International Language Broadcaster position occupied by Mr. Fekrat is a manpower shortage position. See Federal Personnel Manual, Chapter 571, Appendix A. Appointees to such positions may be authorized travel and transportation expenses under the following authority of 5 U.S.C. § 5723:

> "(a) Under such regulations as the President may prescribe and subject to subsections (b) and (c) of this section, an agency may pay from its appropriations--
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> "(1) travel expenses of a new appointee * * * to a position in the United States for which the Office of Personnel Management determines there is a manpower shortage * * * and
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> "(2) transportation expenses of his immediate family and his household goods and personal effects to the extent authorized by section 5724 of this title;
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> from his place of residence at the time of selection or assignment to his duty station. * * * Travel expenses payable under this subsection may include the per diem and mileage allowances authorized for employees by subchapter I of this chapter. * * *"

By virtue of the Agency's authority under 22 U.S.C. § 1474(1) to employ aliens without regard to the civil service laws, Mr. Fekrat would be considered an "appointee" for purposes of reimbursement under 5 U.S.C. § 5723 as of the September 29, 1980 date of his personal services contract. Insofar as otherwise proper, the travel authorization he was issued on October 12, 1982, may be regarded as approval of expenses properly incurred in connection with his appointment to a shortage category position. B-164720, August 5, 1968.

The record does not clearly establish that the appropriate agency officials have properly determined whether the Washington, D.C. area or Iran was Mr. Fekrat's place of residence at the time he was selected for employment with the agency. Thus, as stated below, consideration of his family members' entitlement to travel and transportation expenses would be contingent upon the determination as to whether Iran was Mr. Fekrat's residence at the time of his initial employment.

The record contains a memorandum from the Agency's General Counsel advising the Agency's Director of Administration that Iran was the employee's "domicile or legal residence." The record does not show whether the memorandum was intended to constitute the Agency's official determination as to the employee's place of residence. Furthermore, the record does not show any basis for the General Counsel's opinion that Iran was the employee's residence at the time of his selection other than the fact that the employee's family members were living in Iran at that time. An appropriately based determination as to Mr. Fekrat's place of actual residence is critical to the question of entitlement. Section 5723 of title 5 of the United States Code is derived from section 7 of the Administrative Expenses Act of 1946, as amended, 5 U.S.C. § 73b-3(b) (1964). That provision authorized the payment of applicable transportation and travel expenses from the employee's place of "actual residence." The provision set forth at 5 U.S.C. § 73b-3(b) was restated as 5 U.S.C. § 5723 incident to the enactment of title 5, United States Code, into positive law by Public Law 89-554, September 6, 1966, 80 Stat. 378, 562. Section 7(a) of that law provided that the legislative purpose of Public Law 89-554 was "to restate without substantive change" the laws replaced by such Act.

The term "place of actual residence" is used in 5 U.S.C. § 5722 which governs the travel and transportation expense entitlement of new appointees to posts of duty outside the continental United States. For purposes of determining the appointee's place of actual residence, paragraph 2-1.5g(3)(c) of the Federal Travel Regulations provides in part as follows:

> "(c) Guidance in determination of residence. While it is not feasible to establish rigid standards for what constitutes a place of residence, the concept of a residence represented in an existing statutory provision (8 U.S.C. 1101(33)) may be used as general guidance. This concept views residence as the place of general abode, meaning the principle, actual dwelling place in fact, without regard to intent. Determination of the place of actual residence is primarily an administrative responsibility,

> and the place constituting the actual residence must be determined upon the factual circumstances in each case.
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> "(ii) The place at which the employee physically resided at time of selection for appointment or transfer frequently constitutes the place of actual residence and shall be so regarded in the absence of circumstances reasonably indicating that another location may be designated as the place of actual residence."

We see no reason why the above provision at paragraph 2-1.5g(3)(c) should not also serve to provide guidance as to the determination of an employee's place of residence for purposes of entitlement under 5 U.S.C. § 5723. Ordinarily, our Office will not question any reasonable determination made by the agency of the employee's residence. See Matter of Arroyo, B-197205, May 16, 1980, and February 16, 1982.

Regardless of his place of actual residence at the time of selection, there is no basis for reimbursing travel expenses and per diem for Mr. Fekrat's own travel from Tehran, Iran, to the Washington, D.C. area since he was already in the vicinity of his official duty station at the time of his selection. There is nothing in the record which would indicate that his travel in February 1980 was related to his selection for employment by the Agency and we must conclude that such travel, 6 months prior to his appointment, was purely for personal reasons and therefore not reimbursable. There also would not be any basis for reimbursing the employee for his sister-in-law's travel since a sister-in-law does not fall within the definition of "immediate family" as set forth at paragraph 2-1.4d of the Federal Travel Regulations for purposes of entitlement to transportation and travel expenses. Under that definition an employee's immediate family includes his or her spouse, children and dependent parents. In addition, there would be no basis to allow payment of per diem for his family members. As set forth above, the certifying officer disallowed the payment of per diem for the employee's family members

since the Federal Travel Regulations provide that a per diem allowance is not authorized for the immediate family members of new employees appointed to shortage category positions. See paragraph 2-2.2c(1) of the Federal Travel Regulations.

In addition, the record does not support payment of Mr. Fekrat's claim for reimbursement of transportation expenses for members of his immediate family. As stated above, the record does not establish that the agency properly determined that Iran was Mr. Fekrat's residence at the time of his selection for employment for purposes of reimbursement of transportation and travel expenses under 5 U.S.C. § 5723. Furthermore, the voucher presented to the agency by Mr. Fekrat shows that his family departed Tehran on July 21, 1981, and arrived at Zurich, Switzerland, that same day. The voucher shows that they departed Zurich on August 6, 1981, and arrived at Baltimore-Washington International Airport on the following day, August 7, 1981. However, the copies of the airline tickets submitted by Mr. Fekrat in support of his claim are inconsistent with the schedule shown on the voucher. With a single exception the tickets are dated in May and June of 1982. We have been informally advised by the Agency that the employee has not explained the discrepancy between the dates of the tickets and the travel itinerary set forth in the voucher. In the absence of a proper explanation by the claimant of this significant discrepancy, no portion of his claim for his dependents' transportation expenses may be allowed.

Any potential reimbursement for transportation expenses would be limited by the "Fly America Act" since the record shows that Mr. Fekrat's family flew from Iran to the Washington, D.C. area by Lufthansa German Airlines, a foreign air carrier. Section 5 of the International Air Transportation Fair Competitive Practices Act, as amended, 49 U.S.C. § 1517 (1982), known as the "Fly America Act" requires the Comptroller General to disallow expenditures from appropriated funds for travel by foreign air carrier in the absence of proof of the necessity therefor. This Office has issued guidelines for implementation of the Fly America Act, B-138942, dated March 31, 1981.

Mr. Fekrat has indicated that he and his family members did not fly by U.S. air carrier since at the time of such travel U.S. air carriers had ceased to provide service to

Tehran. The record indicates that they traveled the entire distance to the Washington, D.C. area by Lufthansa German Airlines since the tickets which were required to be purchased with Iranian currency were nontransferable and nonrefundable. Under the guidelines of this Office there would not be any basis for allowing reimbursement for transportation by foreign air carrier beyond the nearest interchange point on the usually traveled route in order to connect with a U.S. air carrier.

Mr. Fekrat has also submitted a claim in the amount of $2,120 for "excess baggage." Such claim would appear to be greatly in excess of the amount which an agency may reasonably allow for excess baggage costs under Chapter I, Part 5, of the Federal Travel Regulations. Furthermore, Mr. Fekrat has not submitted the receipts required for reimbursement of excess baggage costs pursuant to paragraph 1-11.3c(1) of the Federal Travel Regulations. Accordingly, no part of the claim for excess baggage costs may be allowed.

In accordance with the above, no part of Mr. Fekrat's claim may be allowed on the basis of the current record.

Lastly, we note that in her request for an advance decision the certifying officer has asked several hypothetical questions concerning the travel entitlements of alien employees hired pursuant to section 804(1) of the United States Information and Education Exchange Act of 1948, as amended. We do not render decisions on hypothetical questions. We will respond to those questions when raised in connection with a voucher presented for payment.

for Milton J. Socolar
Comptroller General
of the United States