

DECISION



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

Kachman
G. G. M.

FILE: **B-188013**

DATE:

DEC 28 1977

MATTER OF: **Employment restrictions - South Vietnamese aliens**

DIGEST:

1. Drug Enforcement Administration could employ South Vietnamese alien lawfully admitted into United States for permanent residence during fiscal year 1977 despite restriction against Federal employment of aliens in Pub. L. No. 94-410, which permitted employment only of South Vietnamese refugees paroled into United States. Appropriation act previously enacted for same fiscal year permitted employment of South Vietnamese aliens lawfully admitted into United States for permanent residence, and legislative history does not indicate second act was intended to repeal first.
2. Under express terms of only statute now applicable, there is no basis for continued employment by Drug Enforcement Administration of South Vietnamese alien lawfully admitted into United States for permanent residence during fiscal year 1978, since restriction against Federal employment of aliens contained in Pub. L. No. 95-81 contains exception permitting employment only of South Vietnamese refugees paroled into United States and no additional exception to employment restriction provision has been enacted. However, it is doubtful that this result was intended. Therefore GAO recommends clarifying legislation and will defer action pending its consideration by Congress.

This decision to the Attorney General of the United States responds to a letter, with enclosures, from Kevin D. Rooney, Acting Assistant Attorney General for Administration, requesting our views concerning the continued employment of Hoang Ky Ly, a noncitizen employed by the Drug Enforcement Administration (DEA).

The submission indicates that Mr. Ly entered the United States on March 8, 1975, as a student with nonimmigrant status. He was lawfully admitted for permanent residence on August 27, 1975. Mr. Ly was first employed by DEA as a temporary translator, pursuant to

31 U.S.C. § 600b which permits the temporary employment of non-citizens as translators.* In May 1976, however, Mr. Ly was apparently converted to an excepted appointment as a criminal investigator with DEA. 31 U.S.C. § 600b provides in part (as it did with minor differences not here pertinent at the time of Mr. Ly's original excepted appointment):

"Unless otherwise specified and during the current fiscal year, no part of any appropriation shall be used to pay the compensation of any officer or employee of the Government of the United States (including any agency the majority of the stock of which is owned by the Government of the United States) whose post of duty is in continental United States unless such person (1) is a citizen of the United States, (2) is a person in the service of the United States September 22, 1976, who, being eligible for citizenship, has filed a declaration of intention to become a citizen of the United States prior to such date and is actually residing in the United States, (3) is a person who owes allegiance to the United States, (4) is an alien from Cuba, Poland, or the Baltic countries lawfully admitted to the United States for permanent residence, or (5) South Vietnamese refugees paroled into the United States between January 1, 1975, and September 22, 1976 * * *." (emphasis supplied.)

As noted above, Mr. Ly came into the United States from South Vietnam as a student, and later obtained permanent residence status. He was, however, never "paroled" into the United States. See 5 U.S.C. § 1182(d)(5) (1976). It would appear, therefore, that pursuant to the strict terms of section 600b he would not be eligible for employment by the United States. We are of the view, however, that independent authority existed for his continued employment through fiscal year 1977.

Restrictions against the Federal employment of noncitizens are routinely carried in at least one appropriation act each year. Section

* As discussed later herein, this section is derived from a restriction regularly carried in at least one appropriation act each year. At all times pertinent to this decision, the applicable appropriation acts contained an exception permitting the temporary employment of noncitizens as translators.

600b of title 51 of the United States Code is derived from these appropriation act restrictions. The fourth exception contained in section 600b, permitting employment of aliens from specified countries who are "lawfully admitted to the United States for permanent residence," has been carried routinely since the Supplemental Appropriation Act, 1954, ch. 348, § 1302, 67 Stat. 418, 438-439, August 7, 1953. The reference to aliens from South Vietnam was added to the employment restriction provision for the first time at the suggestion of the Department of State by section 508 of the Treasury, Postal Service, and General Government Appropriations Act, 1976, Pub. L. No. 94-91, 89 Stat. 441, 442, August 2, 1975, which amended the fourth exception to permit the employment of aliens from South Vietnam who were lawfully admitted to the United States for permanent residence.

In view of the above, at the time of enactment of Pub. L. No. 94-91, Mr. Ly would have been entitled to be employed by the United States Government. Prior to his original excepted appointment, the restriction against Federal employment of noncitizens was enacted under section 758 of the Department of Defense Appropriation Act, 1973, Pub. L. No. 94-312, 88 Stat. 153, 177, February 9, 1974. This section, however, deleted South Vietnam from the fourth exception and added a fifth to provide as follows:

"Unless otherwise specified and during the current fiscal year, and the period July 1, 1976, through September 30, 1976, no part of any appropriation contained in this or any other Act shall be used to pay the compensation of any officer or employee of the Government of the United States * * * unless such person (1) is a citizen of the United States, * * * (4) is an alien from Cuba, Poland, or the Baltic countries lawfully admitted to the United States for permanent residence, or (5) South Vietnamese refugees paroled into the United States between January 1, 1975, and the date of the enactment of this Act * * *." (Emphasis supplied.)

This restriction was subsequently reenacted for fiscal year 1977 in the Department of Defense Appropriation Act, 1977, Pub. L. No. 94-419, § 758, 90 Stat. 1279, 1280, September 22, 1976.

Intervening between the enactment of these two Defense Department appropriation acts, the language contained in Pub. L. No. 94-91 (permitting employment of South Vietnamese aliens lawfully admitted for permanent residence) was reenacted in the Treasury, Postal Service, and General Government Appropriation Act, 1977, Pub. L. No. 94-363, § 602, 90 Stat. 963, 977, July 14, 1976.

Accordingly, two separate acts making appropriations for fiscal year 1977 contain provisions restricting the employment of aliens. With regard to aliens from South Vietnam, however, one act permits only the employment of persons admitted for permanent residence, while the other permits only the employment of refugees paroled into the United States. Since the latter is the most recent enactment, it is currently codified at section 880b of title 7 of the United States Code (see 51 U.S.C.A., 1977 Pamphlet). However, since the statutes are *in pari materia* they should be construed together unless we determine that the Congress intended that the second enactment repeal the first. That statutes *in pari materia* should be construed together is a restatement of the presumption against the implied repeal of statutes. 2A Sutherland, Statutory Construction §§ 51.01 et seq.

The employment restriction in each act starts with the phrase "Unless otherwise specified * * *." There is statutory recognition, therefore, that other statutes might be enacted during the same fiscal year which might also contain additional exceptions to the general restriction against the employment of noncitizens by the United States. Thus it would appear that the exceptions contained in both statutes would have to be given effect for fiscal year 1977, unless it can be affirmatively demonstrated that the Congress intended to repeal all prior enactments of the employment restriction when it enacted Pub. L. No. 94-419. We are unaware of any legislative history specifically indicating that this was the Congress' intent.

Debate in the Senate on the bill ultimately enacted as Pub. L. No. 94-212 (which first permitted the employment of South Vietnamese refugees paroled into the United States) does not indicate any congressional desire to repeal the former exception. See, in this regard, the statement of Senator McClellan at 121 Cong. Rec. S70341-42 (daily ed. November 18, 1975). Senator McClellan pointed out that the exception language permitting the employment of South Vietnamese aliens lawfully admitted for permanent residence "was inadequate to accomplish its purpose" since it did not reach South Vietnamese refugees who had been admitted under the Attorney General's parole authority but were not yet eligible to seek "legal residence." Thus the basic intent of the "corrected" language, referring to South Vietnamese refugees paroled into the United States, was to expand the scope of the exception. We find no evidence that Congress intended at the same time to disqualify those South Vietnamese who were able to satisfy the permanent residence test.

Subsequent legislative history concerning the restrictions contained in Pub. L. No. 94-363 and Pub. L. No. 94-419, indicate that the Congress understood that it was reenacting the South Vietnamese

exceptions as contained in the respective 1976 Acts--i.e., the restrictions contained in Pub. L. Nos. 94-91 and 94-311. There is no indication that the employment restriction enacted in Pub. L. No. 94-419 was intended to repeal the restriction written in Pub. L. No. 94-311. See H.R. Rep. No. 94-155, 18 (1976) and S. Rep. No. 94-351, 46 (1976) with regard to Pub. L. No. 94-311; see S. Rep. No. 94-1045, 257 (1976) with regard to Pub. L. No. 94-419.

In light of the above, we are of the view that Pub. L. No. 94-419 does not, by implication, repeal Pub. L. No. 94-311. Therefore, the provision in Pub. L. No. 94-311, permitting the employment of aliens from South Vietnam who were lawfully admitted to the United States for permanent residence, and the provision in Pub. L. No. 94-419, permitting the employment of South Vietnamese refugees paroled into the United States between certain specified dates, may both be given legal effect. Accordingly, the continued employment of Mr. Ly during fiscal year 1977 was proper.

The restriction against the employment of non-citizens has been reenacted for fiscal year 1978 in the Treasury, Postal Service, and General Government Appropriation Act, 1978, Pub. L. No. 95-81 (July 31, 1977), 91 Stat. 341, 354-355. This Act does not reenact the employment restriction as enacted in the Treasury, Postal Service, and General Government Appropriation Acts for the previous 2 years--i.e., the restriction contained in Pub. L. Nos. 94-91 and 94-311. Instead, with regard to the exception for aliens from South Vietnam, Pub. L. No. 95-81 permits the employment only of "refugees paroled into the United States * * *." This is the same language used in the employment restriction as enacted in the prior year Defense Department Appropriation Act discussed above. The Department of Defense Appropriation Act, 1978, Pub. L. No. 95-111 (September 21, 1977), 91 Stat. 586, does not contain the employment restriction provision in any form (although it does contain an exception for Defense Department employees, id., § 583, 91 Stat. 586). In this regard, H.R. Rep. No. 95-375, 44 (1977), on the bill ultimately enacted as Pub. L. No. 95-81, indicates that the employment-restriction provision contained in Pub. L. No. 95-81 was intentionally revised to preclude the possibility of reenacting the provision twice for fiscal year 1978.

Since, as noted above, Pub. L. No. 95-81 permits the employment of refugees from South Vietnam who have been paroled into the United States, we must conclude that, under the express terms of the only relevant statute now in effect, there is no basis to support Mr. Ly's continued employment by DEA in fiscal year 1978. However, since it seems doubtful that such a result was

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envisioned or intended by Congress, we recommend that the Department of Justice seek clarifying legislation.

If the Department agrees to follow this course, we will take no action with respect to Mr. Ly (or persons similarly situated) pending consideration of the matter by Congress. If the Department declines to seek clarifying legislation or if clarifying legislation is not enacted by the close of the next session of Congress, Mr. Ly (and persons similarly situated) will have to be terminated.

P. P. KELLER

Ret'd

**Comptroller General
of the United States**