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

B-176973

JAN 24 1973

Captain D. M. Sartori, USAF
Accounting and Finance Officer
Through Deputy Assistant Comptroller for
Accounting and Finance (AF/ACFA)
Headquarters, United States Air Force

Dear Captain Sartori:

Your letter dated August 8, 1972, with enclosures, reference ACF, forwarded here by letter dated September 8, 1972, from the Deputy Assistant Comptroller for Accounting and Finance, United States Air Force, Washington, D. C., requests an advance decision as to the entitlement of Staff Sergeant [redacted], to basic allowance for quarters (BAQ) on account of a dependent ([redacted]). Your request was assigned No. DO-AF-1167 by the Department of Defense Military Pay and Allowance Committee.

The record indicates that [redacted], formerly [redacted] a native of the Philippines, was admitted to the United States as a non-immigrant temporary visitor in January 1970. She obtained a divorce from her husband, [redacted], on March 28, 1970, in the First Civil Court of the District of Bravos, Chihuahua, Mexico. She appeared personally, and submitted a certificate showing her residency in Juarez, Mexico. Her husband, a resident of the Philippines, appeared by counsel. Subsequently, she and Sergeant [redacted] were ceremonially married on May 17, 1970, in Edmonds, Washington. The marriage certificate shows their residence to be Lynnwood, Washington.

Based upon this marriage, [redacted] applied for and received basic allowance for quarters for the period from May 17, 1970, to April 7, 1971. In addition, the record shows that the Board of Immigration Appeals, Department of Justice, decided on February 19, 1971, that [redacted] foreign divorce decree was valid and accorded her "immediate relative" immigrant status under section 201(b) of the Immigration and Nationality Act, 8 U.S.C. 1151, as the spouse of a United States citizen. There is no indication in the record that the validity of the Mexican divorce or the validity of the marriage has been considered by a court of competent jurisdiction in the United States.

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Accompanying your submission is a military pay order, DD Form 114, stating that there is due the United States the sum of \$1,123.50 because of erroneous payment of BAQ for a dependent wife for the period from May 17, 1970, the date of the marriage ceremony, through April 7, 1971, the day prior to receiving Government quarters. You ask whether or not Sergeant [redacted] was entitled to BAQ in accordance with paragraph 30201, Department of Defense Military Pay and Allowances Entitlements Manual, during this period.

It is well established that unless a foreign court granting a divorce had jurisdiction over the subject matter of the divorce by reason of bona fide residence or domicile there of at least one of the parties, its decree of divorce will not, under the rules of international comity, be recognized in one of the States of the United States, even though the laws of such country do not make residence or domicile a condition to its courts taking jurisdiction. 36 Comp. Gen. 121¹ (1956). Thus, as a general rule, we have held that where the validity of a second marriage is dependent upon dissolution of the first marriage by a divorce decree of a Mexican court and such divorce has not been recognized by a court of competent jurisdiction in the United States, the marital status of the parties is of too doubtful legality for us to approve increased allowance on account of such marital relationship. See generally 47 Comp. Gen. 286¹(1967), as modified by 49 Comp. Gen. 833¹(1970).

In the present case, it is noted that both parties to the divorce action were Philippine nationals. In addition, it is doubtful that the Mexican divorce decree would be subject to collateral attack by either of the parties to the decree in the State of Washington. In light of the Board of Immigration Appeals decision of February 19, 1971, and all of the facts and circumstances surrounding this case, we are of the opinion that a tenable basis exists for concluding that the marriage of [redacted] and [redacted] was valid for quarters allowance purposes. Accordingly, [redacted] may be considered as being entitled to basic allowance for quarters for a dependent wife during the period in question.

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The enclosures to your letter of August 8, 1972, are returned.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States

Enclosures