

DECISION



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

FILE: B-214549

DATE: October 5, 1984

MATTER OF: John M. Ryan

DIGEST:

A foreign service officer stationed in Nepal was authorized rest and recuperation travel to Los Angeles, California, instead of Hong Kong, the designated relief area for employees in Nepal. He traveled by a circuitous route to Los Angeles where he stayed for just over a day before beginning his return travel to Nepal. Since he did not spend his rest and recuperation time in the continental United States as contemplated, he may be reimbursed only for the constructive cost of travel to Hong Kong, the designated relief area.

This matter concerns the rest and recuperation travel entitlements of a foreign service officer during a period of annual leave when he was away from his post of duty in Nepal.^{1/} Though the foreign service officer was authorized rest and recuperation travel to the continental United States, he stayed there only 1 day of his 39-day trip. Since this 1-day stay did not meet the purpose for which rest and recuperation travel to the United States is authorized, his entitlement to travel expenses is limited to the cost of round-trip travel to Hong Kong, the designated relief area for Nepal.

BACKGROUND

Mr. John M. Ryan, a foreign service officer employed with the Agency for International Development, was stationed at Kathmandu, Nepal, in 1982. On October 5, 1982, written orders for the purpose of rest and recuperation (R&R) travel were issued authorizing Mr. Ryan's and his family's

^{1/} This action is in response to a request for a decision from Mr. Raymond E. Dropik, Controller, Agency for International Development, Kathmandu, Nepal.

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round-trip air travel by the most direct route between Kathmandu and Los Angeles, California. The travel authorization specifically stated, "Total allowable cost [not to exceed] transportation cost to optional R&R area, New York, N.Y. and return."

Mr. Ryan and his family departed Kathmandu on October 20, 1982. The itinerary submitted in support of his travel expense claim indicates that they traveled to Los Angeles by way of Bangkok, Australia, and New Zealand, arriving in Los Angeles on November 18, 1982. They left Los Angeles the next day, November 19, and returned to Nepal on November 29, 1982, having stopped en route in Hawaii and Hong Kong. Mr. Ryan specifically noted that on November 18 and 19 they spent a total of 29 hours in Los Angeles.

The responsible agency finance officials indicate that Mr. Ryan has been reimbursed for his and his dependents' trip based on the constructive cost of round-trip travel between Kathmandu and Los Angeles. Apparently that cost was no more than the constructive cost of travel to New York and return. They now question whether the Ryans' brief stay in Los Angeles served the purpose for which R&R travel to the United States is authorized and, if not, whether he was properly reimbursed travel expenses based on the constructive cost of round-trip travel between Nepal and the United States.

ANALYSIS

Subsection 901(6) of the Foreign Service Act of 1980, Public Law 96-465, approved October 17, 1980, 94 Stat. 2124, as codified, 22 U.S.C. § 4081(6) (1982), provides that:

"The Secretary may pay the travel and related expenses of members of the Service and their families, including costs or expenses incurred for--

* * * * *

"(6) rest and recuperation travel of members of the Service who are United States

citizens, and members of their families, while serving at locations abroad specifically designated by the Secretary for purposes of this paragraph, to--

"(A) other locations abroad having different social, climatic, or other environmental conditions than those at the post at which the member of the Service is serving, or

"(B) locations in the United States;

"except that, unless the Secretary otherwise specifies in extraordinary circumstances, travel expenses under this paragraph shall be limited to the cost for a member of the Service, and for each member of the family of the member, of 1 round trip during any continuous 2-year tour unbroken by home leave and of 2 round trips during any continuous 3-year tour unbroken by home leave."

The legislative history of this provision reflects that it was designed to provide relief to foreign service personnel and members of their families residing at overseas posts where they might experience hardships because of isolation, unfavorable climatic conditions, or other factors.^{2/} The language of subparagraph 4081(6)(B) authorizing R&R travel to the United States was added by section 407 of the Foreign Relations Authorization Act for Fiscal Year 1979.^{3/} Prior to October 1, 1978, foreign service personnel had been authorized R&R travel to a designated relief area "abroad"

^{2/} See S. REP. NO. 913, 96th Cong. 2d Sess. 76, reprinted in 1980 U.S. CODE CONG. & AD. NEWS 4419, 4493-4494.

^{3/} Public Law NO. 95-426, October 7, 1978, 92 Stat. 980 (1978).

selected to offer a significant change in environmental conditions.^{4/} By the 1978 amendment Congress sought to provide more than a periodic sojourn away from a difficult environment. Specifically, Congress felt that authorization for optional R&R travel to the United States would serve an additional purpose similar to that of home leave in that it would enable foreign service personnel to renew their familiarity with the American way of life. Considerations cited as warranting the substantial additional costs anticipated in connection with optional R&R travel to the United States were the desirability of encouraging foreign service personnel to maintain close familiarity with "rapid and profound developments in American life," the opportunity to provide relief from long periods of separation from children in U.S. colleges, and the favorable effect on the balance of payments.^{5/}

Implementing regulations issued by the Secretary of State are contained in 3 Foreign Affairs Manual 698. At the time of the Ryans' travel, section 698.7 had been amended by Foreign Affairs Manual Circular No. 82-6, January 27, 1982, to read:

"698.7 Designated Posts and Relief Areas

"Exhibit 698.7 lists the designated posts and relief areas for rest and recuperation travel. This list changes from time to time to reflect changing circumstances.

* * * * *

"The nearest port of entry in the contiguous 48 states is designated as an optional rest

^{4/} Section 708 of the Foreign Assistance Act of 1961, Public Law No. 87-195, September 4, 1961, 75 Stat. 464, as codified, 22 U.S.C. 1136(9) (1976).

^{5/} See S. REP. NO. 842, 95 Cong., 2d Sess. 21-23 (1978).

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and recuperation point for posts which are authorized rest and recuperation or danger pay. However, because of budgetary constraints, the option of R&R to the United States (in lieu of to a post's designated relief area) is limited to employees at 20-25% hardship differential posts. * * *

Under Exhibit 698.7, Hong Kong is the designated relief area abroad for R&R travel from posts in Nepal and, as indicated by the cost limitation specified in Mr. Ryan's travel orders, New York, N.Y., is the port of entry nearest Nepal.

The regulations specifically provide for travel other than to the designated relief area or the United States. At the time of Mr. Ryan's travel and presently, section 698.10-3 provides:

"698.10-3 Elective Alternatives

"Actual travel may be performed by other classes or modes of travel (including by automobile), or from the post of assignment to a place other than the designated relief area, provided that the purpose of rest and recuperation travel is met. The authorizing officer determines in advance that such travel meets the objectives of the program.

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"The cost to the Government of such travel to any elective point may not exceed the transportation expenses that would have been incurred for travel between the point of origin and the designated relief area by the applicable mode and class of travel provided in sections 698.10-1 and 698.10-2 and may not exceed allowable transportation expenses actually incurred."

Neither the statute nor the regulations establish a minimum time period that foreign service personnel must remain in a particular locality for that place to qualify as an alternative R&R point. Section 698.10-3, however,

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contemplates a determination that travel to an elective alternative destination meets the purpose of R&R travel.

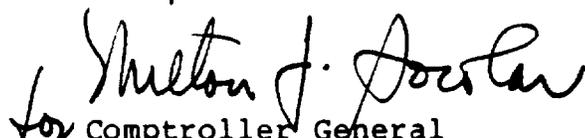
In our decisions we have not attempted to fix a specific standard for determining what constitutes a sufficiently long stay at a particular place to serve as a proper statutory basis for the payment of expenses associated with R&R travel. However, consistent with section 698.10-3, we have recognized that an employee may not establish his entitlement to R&R expenses by traveling to a location where his stay is of insufficient duration to meet the purpose of R&R travel. We have held that an employee who traveled to Amsterdam rather than Rome, his designated relief point, could be reimbursed for the constructive cost of round-trip travel to Rome without a financial penalty for his travel by foreign air carrier since U.S. air carrier service was unavailable between his post and Amsterdam.^{6/} That holding was based on the determination that the employee's 1-week stay in Amsterdam was of sufficient duration to serve the intended purpose of rest and recuperation and establish Amsterdam as an alternate R&R point. We specifically noted that the result would have been different if the employee had used Amsterdam as a connection point for travel elsewhere.

In the present case, Mr. Ryan and his family spent more than a week of their 39-day trip visiting Australia, more than 2 weeks visiting New Zealand and nearly a week in Hong Kong. In the absence of anything in the record to establish that they intended a more significant period of leave in the continental United States, we are unable to conclude that their brief stay in Los Angeles served the purpose of rest and recuperation. Not only did it fail to provide the period of relief for which R&R travel is generally intended, it failed to meet the purpose of familiarization with the American way of life or result in the balance of payments benefits that Congress felt warranted the additional costs associated with optional R&R travel to the United States. Hence, we conclude that Los Angeles was not an alternate R&R point for the purpose of establishing Mr. Ryan's entitlement to R&R travel expenses. Given his itinerary either New Zealand or Australia may be viewed as his alternate R&R point.

^{6/} Arthur R. Thompson, 56 Comp. Gen. 209, 212 (1977).

The travel expense entitlement of a foreign service officer or employee whose travel, like Mr. Ryan's, is to an alternate R&R point is covered in 3 Foreign Affairs Manual 698.10-3. Specifically, this regulation provides that the cost to the Government of travel to any elective point will not exceed the transportation expenses that would have been incurred for travel between the point of origin and the "designated relief area." For individuals stationed in Nepal, the designated relief area specified in Exhibit 698.7 is Hong Kong. Accordingly, the amount that Mr. Ryan may be reimbursed for his and his family's R&R travel is limited to the cost of round-trip transportation between Kathmandu, Nepal, and Hong Kong. In limiting reimbursement to the cost of travel to the designated relief area rather than the "optional" R&R point in the United States we are consistent with the purpose of the 1978 amendment authorizing optional R&R travel to the United States. The cost projections contained in the Senate Report that accompanied the bill containing the expanded authority indicated that additional costs would be involved in its implementation only to the extent employees actually chose to spend their rest and recuperation leave in the United States.^{7/}

We believe, however, that the language of 3 FAM 698.10-3 should be revised to more clearly state that reimbursement for travel to an elective or alternate R&R point outside the continental United States cannot be based on the constructive cost of travel to the "optional" R&R point in the United States and that expenses in excess of the cost of travel to the designated relief point may be paid only if the employee actually travels to the United States and remains there for a sufficient period to accomplish the purpose of rest and recuperation.


for Comptroller General
of the United States

^{7/} See S. REP. NO. 842, supra (footnote 5).