



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

B-192976

April 20, 1979

Mr. James S. Keener, Jr.,
Chief, Staffing Programs Branch
U.S. Customs Service
Department of the Treasury
Washington, D.C. 20229

Do not make available to public reading room

Dear Mr. Keener:

By letter of September 20, 1978, you stated that your San Francisco Region has requested guidance in determining the eligibility of a citizen of Taiwan for a student aid position in the excepted service in Hawaii. You state that the hiring of a citizen of Taiwan, lawfully admitted for permanent residence, for a student aid position in continental United States is not prohibited by law.

You requested our guidance concerning the application of what is now Section 602 of the Treasury, Postal Service, and General Government Appropriations Act, 1979, Public Law 95-429, October 10, 1978, 92 Stat. 1015, 31 U.S.C. § 699b. This section provides as follows:

"Unless otherwise specified and during the current fiscal year 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 (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 on the date of enactment of this Act, 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, South Vietnam, or the Baltic countries lawfully admitted to the United States for permanent residence, or (5) South Vietnamese, Cambodian and Laotian refugees paroled into the United States between January 2, 1975, and the

date of enactment of this Act; Provided, That for the purpose of this section, an affidavit signed by any such person shall be considered prima facie evidence that the requirements of this section with respect to his status have been complied with; Provided further, That any person making a false affidavit shall be guilty of a felony, and, upon conviction, shall be fined not more than \$4,000 or imprisoned for not more than one year, or both; Provided further, That the above penal-clause shall be in addition to, and not in substitution for any other provisions of existing law; Provided further, That any payment made to any officer or employee contrary to the provisions of this section shall be recoverable in action by the Federal Government. This section shall not apply to citizens of the Republic of the Philippines or to nationals of those countries allied with the United States in the current defense effort, or to temporary employment of translators, or to temporary employment in the field service (not to exceed sixty days) as a result of emergencies."

As the above statutory provision does not expressly define the term "continental United States" you have asked whether Alaska, Hawaii, Puerto Rico, the Virgin Islands, Guam, and the Isthmus of Panama are a part of the "continental United States" as that term is included in what is now Public Law 95-425.

Section 48 of the Alaska Omnibus Act, Public Law 86-70, June 25, 1959, 73 Stat. 154 provides as follows:

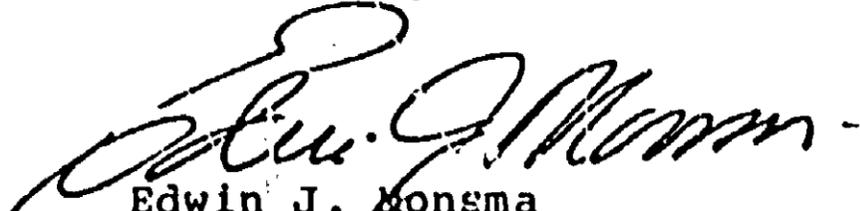
"Whenever the phrase "continental United States" is used in any law of the United States enacted after the date of enactment of this Act, it shall mean the 49 States of the North American Continent and the District of Columbia, unless otherwise expressly provided."

You have asked whether the Customs Service may appoint, in those areas which are not a part of the "continental United States," an alien who meets the exceptions contained in

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Public Law 95-429, to a position in the excepted service. Questions with regard to an agency's authority to appoint an individual to a position should be directed to the Office of Personnel Management, Washington, D.C. 20415.

Sincerely yours,



Edwin J. Monsma
Assistant General Counsel