

12/11/74

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TO HICOMTERPACIS/STATUS LNO PRIORITY

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UNCLAS SECTION 1 OF 3 STATE 271801/1
PASS TO HERMAN MARCUSE

E.O. 11652:

TAGS: PFOR TQQ

SUBJECT: RESPONSE TO YOUR LETTER OF NOV 20, 1974
HICOMTERPACIS SAIPAN FOR STATUS LNO PASS TO HERMAN MARCUSE

QUOTE: DEAR SIR: THIS IS IN RESPONSE TO YOUR LETTER DATED
11/10/74 CONCERNING ARTICLE III AND SECTIONS 503 AND 506

OF THE DRAFT STATUS AGREEMENT WITH THE NORTHERN MARIANAS.

YOU HAVE REQUESTED OUR ADVICE ONLY WITH RESPECT TO
SECTIONS 503 AND 506, AND HAVE REMARKED THAT IT IS YOUR
UNDERSTANDING THAT ARTICLE III HAS BEEN CLEARED WITH THE
SERVICE PREVIOUSLY. THE SERVICE HAS NOT PREVIOUSLY KNOWN
OF THE NATURE AND CONTENTS OF ARTICLE III. THE LAST FDDRAFT
DISCUSSED WITH US PREVIOUSLY, ON JULY 31, 1974, CONSTITUTED
AGREEMENT WITH THE PEOPLE OF MICRONESIA, AND CONFERRED
ONLY NONCITIZEN NATIONALITY OF THE UNITED STATES.
ACCORDINGLY WE FIND IT NECESSARY TO DISCUSS BOTH APPENDIX
A AND APPENDIX B.

THE POLICY TO EXTEND UNITED STATES SOVEREIGNTY OVER THE
NORTHERN MARIANA ISLANDS WITHOUT INCORPORATING THEM INTO
THE UNITED STATES HAS PRECEDENTS IN THE STATUS OF THE
PHILIPPINE ISLANDS BEFORE THEY WERE GIVEN INDEPENDENCE
AND IN THE STATUS OF AMERICAN SAMOA. IT IS UNPRECEDENTED
TO COUPLE WITH SUCH AN ARMS-LENGTH RELATIONSHIP THE

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RIGHT TO ACQUIRE CITIZENSHIP BY BIRTH IN SUCH A POSSESSION, BUT THE DIFFICULTIES IN DRAFTING AND ADMINISTERING SUCH A LAW MAY BE SURMOUNTED. WE THINK IT IS MUCH MORE DIFFICULT TO PROVIDE, AS INTENDED IN SECTION 506, FOR SELECTIVE NATURALIZATION AS UNITED STATES CITIZENS IN THE COURTS OF THE NORTHERN MARIANA ISLANDS. AT THE OUTSET, THEREFORE, WE URGE TURNING BACK FROM THE TORTUOUS PATH THE DRAFT AGREEMENT IS TAKING. EITHER THE NORTHERN MARIANA ISLANDS SHOULD BE A PART OF THE UNITED STATES UNDER THE IMMIGRATION AND NATIONALITY ACT, WITHOUT RESERVATION, AND IN CONSEQUENCE PERSONS WOULD BE ABLE TO ACQUIRE UNITED STATES CITIZENSHIP THERE BY BIRTH OR BY NATURALIZATION IN ACCORDANCE WITH EXISTING LAW, --- OR THE NORTHERN MARIANA ISLANDS SHOULD NOT BE A PART OF THE UNITED STATES, PERSONS BORN THERE WOULD THEREBY ACQUIRE NO MORE THAN NON CITIZEN NATIONALITY, AND THOSE ASPIRING TO NATURALIZATION COURTS IN GUAM OR OTHER PARTS OF THE UNITED STATES.

WE BELIEVE THAT THE SCHEME OF ARTICLE III OF THE AGREEMENT, CONFERRING UNITED STATES CITIZENSHIP ON CITIZENS OF THE NEWLY ACQUIRED POSSESSION WITHOUT MAKING THAT POSSESSION A TERRITORY OF THE UNITED STATES, IS UNPRECEDENTED AND UNWISE, THOUGH PROBABLY NOT IN CONTRAVENTION OF THE CONSTITUTION OF THE UNITED STATES. BUT WE BELIEVE THAT THE SCHEME OF SECTION 506, TO AUTHORIZE COURTS OF THE NORTHERN MARIANAS TO NATURALIZE ONLY CLOSE RELATIVES OF UNITED STATES CITIZENS WHO ACQUIRED THEIR CITIZENSHIP UNDER ARTICLE III OF THE AGREEMENT, MAY BE IN CONTRAVENTION OF ARTICLE 1, SECTION 3 OF THE CONSTITUTION CONFERRING ON CONGRESS THE POWER TO ESTABLISH A UNIFORM RULE OF NATURALIZATION NO MATTER HOW SECTION 506 IS REDRAWN. AND SECTION 304 OF THE AGREEMENT PARAPHRASING (PARODYING MAY BE MORE APT) THE LANGUAGE OF ARTICLE IV, SECTION 2, CLAUSE 1 OF THE CONSTITUTION REGARDING ENTITLEMENT TO PRIVILEGES AND IMMUNITIES OF CITIZENS IN THE SEVERAL STATES APPEARS TO US TO BE AN IMPRUDENT PROVOCATION, ONCE IT IS REALIZED HOW ONE-SIDED THIS PROVISION IS, AND THAT THE CITIZENS OF THE SEVERAL STATES WILL "NOT" HAVE THE SAME RIGHTS AND PRIVILEGES, OF CONGRESS TO AND COMMERCE WITHIN THE NORTHERN MARIANA ISLANDS AS THE INHABITANTS OF THAT COMMONWEALTH WILL HAVE BOTH AT HOME AND IN THE SEVERAL STATES.

WE THINK IT IS INAPPROPRIATE TO MAKE NO FULLER DECLARATION OF THE RIGHT OF THE INHABITANTS OF THE NORTHERN MARIANAS TO ELECT TO RETAIN THEIR FORMER (JAPANESE) NATIONALITY THAN THE PSSSDDDD PASSING REMARKS CONTAINED

IN THE INTRODUCTORY CLAUSE OF SECTION 301. THAT RIGHT OF ELECTION SHOULD BE SPELLED OUT CLEARLY, WHETHER IN A SECTION PRIOR TO 301 OR IN 302.

WE THINK IT IS UNDESIRABLE TO PRESCRIBE IN SECTION 301 THAT THE FOUNDATION FOR ACQUISITION OF UNITED STATES CITIZENSHIP MAY BE "EITHER" RESIDENCE OR DOMICILE. DOMICILE PRESENTS MORE DIFFICULTIES, AND WAS ABANDONED IN UNITED STATES CITIZENSHIP LAW. CF. IMMIGRATION AND NATIONALITY ACT, SECTION 101(B)(1), 101(C)(1). WE RECOMMEND LIMITING THE REQUIREMENTS TO RESIDENCE.

TURNING TO THE SPECIFIC WORDING OF ARTICLE III WANDDD AND SECTION 506, WE SHALL ENDEAVOR TO MAKE CONSTRUCTIVE SPECIFIC SUGGESTIONS. WE ARE AWARE THAT SOMETIMES WE MAY FAIL TO APPRECIATE THE DRAFTER'S EXACT PURPOSE, BASED ON BACKGROUND DISCUSSIONS.XV

IN SECTION 301, WE RECOMMEND THAT THE INTRODUCTORY CLAUSE BE AMENDED WITH RESPECT TO CHILDREN, BY USING THE WORDING OF THE IMMIGRATION AND NATIONALITY ACT, SECTION 101(B)(1) AND 101(C)(1), AS FOLLOWS;
"THE FOLLOWING PERSONS AND THEIR UNMARRIED CHILDREN UNDER THE AGE OF TWENTY-ONE YEARS...."

IN SECTION 301(A), IT IS RECOMMENDED THAT INSTEAD OF "THAT DATE", THE WORDS "THE SAID EFFECTIVE DATE" BE SUBSTITUTED. ALSO DELETE "OR ARE DOMICILED".

IN SECTION 301(B), IT IS RECOMMENDED THAT "HAVE RESIDED" BE SUBSTITUTED FOR "HAVE BEEN DOMICILED". FOR "THAT DATE" SUBSTITUTE "THE SAID EFFECTIVE DATE". IF POSSIBLE, SPECIFY THE VOTING AGE INSTEAD OF THE VAGUE "UNDER AGE".

BEFORE DISCUSSING THE TERMINOLOGY OF SECTION 301(C), WE NOTE THE SURPRISINGLY SHARP DIFFERENCE BETWEEN THE STRSD

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UNCLAS SECTION 2 OF 3 STATE 271301/2
PASS TO HAN MARCUSE
STRICT REQUIREMENTS OF SECTION 301(B) AND THE RELATIVELY
EASY REQUIREMENTS OF SECTION 301(C), IS THERE SOMETHING
MISSING FROM THE DEFINITION IN 301(C)? THE TWO SUB-
SECTIONS STRIKE US AS INCONGRUOUS.

IN SECTION 301(C), SUBSTITUTE "RESIDING" FOR "DOMICILED"
AND "HAVE RESIDED" FOR "HAVE BEEN DOMICLED". ALSO SUBSTITU-
TUTE "SAID PRECEDING DAY" FOR "THAT DAY" AND "SAID EFFECT-
IVE DATE" FOR "THAT DATE".

IT IS RECOMMENDED THAT SECTION 303 BE RENUMBERED AS
SECTION 301(D), AND ED BE AMENDED TO READ AS FOLLOWS:
"ALL PERSONS BORN IN THE NORTHERN MARIANA ISLANDS
ALL PERSONS BORN IN THE NORTHERN MARIANA ISLANDS
ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION AND SUBJECT
IT IS RECOMMENDED THAT SECTION 303 BE RENUMBERED AS
SECTION 301(D), AND BE AMENDED TO READ AS FOLLOWS:
"ALL PERSONS BORN IN THE NORTHERN MARIANA ISLANDS ON
OR AFTER THE EFFECTIVE DATE OF THIS SECTION AND SUBJECT
TO THE JURISDICTION OF THE UNITED STATES, WILL BE
CITIZENS OF THE UNITED STATES AT BIRTH."

IT IS RECOMMENDED THAT SECTION 302 BE AMENDED BY PRO-
VIDING THAT ANY PERSON WHO BECOMES A CITIZEN OF THE UNITED
STATES AFTER BIRTH SOLELY BY VIRTUE OF THE PROVISIONS
OF SECTION 301 AND WHO ON THE EFFECTIVE DATE OF THAT SECTION
HAD JAPANESE NATIONALITY WHICH HE HAD NEVER LOST AND
MAY ELECT WITHIN SIX MONTHS TO RETAIN SAID JAPANESE
NATIONALITY. THE "AFTER BIRTH" PROVISION NEGATES SUCH
RIGHT OF ELECTION BY A PERSON ACQUIRING CITIZENSHIP
AT BIRTH UNDER SECTION 301(D). NOTE, HOWEVER, THAT
BY REPOSITIONING SECTION 303 AS SECTION 301(D) WE HAVE
ENABLED THE CITIZEN AT BIRTH TO OPT AT AGE 18 FOR NON-
CITIZEN NATIONALITY. WE BELIEVE THAT THIS ACCORDS WITH
THE SPIRIT OF THE AGREEMENT, THAT NONCITIZEN NATIONALITY
MAY BE PERPETUATED IN A FAMILY BEYOND THE FIRST GENERA-
TION VOLUNTARILY, AND NOT BY THE MERE ACCIDENT OF
BIRTH ABROAD.

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REGARDING SECTION 340304, I HAVE COMMENTED ABOVE REGARDING ITS ~~WISDOM~~ WISDOM AS WRITTEN. WHETHER OR NOT IT IS CONSTITUTIONALLY DEFENSIBLE, IT APPEARS TO BE UNNECESSARY. THE EQUAL PROTECTION CLAUSE, WHICH IS IN GUAM'S BILL OF RIGHTS (40 U.S. C. 1421B(N)) AS WELL AS IN THE BILLS OF RIGHTS OF THE OTHER TERRITORIES AND IN THE FOURTEENTH AMENDMENT, WOULD APPEAR TO PROVIDE AMPLE PROTECTION FOR NORTHERN MARIANA CITIZENS TRAVELLING IN THE UNITED STATES. CF. GRAHAM V. RICHARDSON, 403 U.S. 365 (1971). PERHAPS A MODEST CATALOGUE OF RIGHTS PATTERNED ON THE CONVENTION RELATING TO THE STATUS OF REFUGEES (TIAS 6577) WOULD DO.

IN SECTION 503(B) IT IS SUGGESTED THAT "INAPPLICABLE TO THE TRUST TERRITORY OF THE PACIFIC ISLANDS PRIOR TO THE EFFECTIVE DATE OF THIS SECTION" BE SUBSTITUTED FOR "PRESENTLY INAPPLICABLE", ETC.

IN SECTION 506(A) THE STATUTORY TERM "IMMEDIATE RELATIVES" SHOULD BE SUBSTITUTED FOR "CLOSE RELATIVES". BEYOND THIS COSMETIC SUGGESTION, WE HAVE DIFFICULTY ENVISIONING THE COMMONWEALTH OPERATING ITS OWN IMMIGRATION LAWS ON THE BASIS OF THE AVAILABLE DATA. WHAT WILL BE THE

RIGHTS OF UNITED STATES CITIZENS WHO ACQUIRED SUCH CITIZENSHIP ~~OR~~ PRIOR TO THE EFFECTIVE DATE OF ARTICLE III OF ~~THE~~ THE AGREEMENT AND WHO ARE RESIDING IN THE ~~NORTHERN~~ NORTHERN MARIANA ISLANDS ON THAT DATE? WILL THE COMMONWEALTH RECOGNIZE THEIR RIGHT OF RESIDENCE? IF NOT, WILL IT HAVE AUTHORITY TO EXPEL THEM AS WELL AS TO PREVENT ENTRY OF OTHER UNITED STATES CITIZENS/ IF SO, SHOULD THE RESIDENT CITIZENS BE PERMITTED TO PETITION FOR CLASSIFICATION AS PROSPECTIVE IMMIGRANTS TO THE COMMONWEALTH OF THEIR "IMMEDIATE RELATIVES"? THIS SITUATION PERTURBS US, AS WE STATED PREVIOUSLY, AND WE REITERATE, IT WOULD BE PREFERABLE EITHER TO APPLY ALL OR TO APPLY NONE OF THE IMMIGRATION AND NATIONALITY ACT TO THE NORTHERN MARIANAS. UNDER SECTION 204 OF THE ACT. THE CITIZEN MUST FILE A PETITION WITH THE ATTORNEY GENERAL, WHO WILL PROCEED TO ADJUDICATE WHETHER THE PROSPECTIVE IMMIGRANT IS ENTITLED TO CLASSIFICATION AS AN "IMMEDIATE RELATIVE". AN ALIEN MUST ESTABLISH HIS LAWFUL ADMISSION INTO THE UNITED STATES FOR PERMANENT RESIDENCE AS AN ELEMENT OF HIS PROOF OF ELIGIBILITY FOR CITIZENSHIP. ACT, SECTIONS 316(A), 318. THE ATTORNEY GENERAL AND DESIGNATED EMPLOYEES OF THE SERVICE HAVE A STATUTORY ROLE IN THE A-NATURALIZATION PROCESS LIKE THAT DENOTED IN SECTION 506 APPEAR TO BE WEIGHTY.

AS FOR SECTION 506(B), SUBJECT TO THE SAME RESERVATIONS,
IT IS SUGGESTED THAT THE INTRODUCTORY CLAUSE BE AMENDED
TO READ: "THE TERM 'UNITED STATES' AS DEFINED IN SECTION
101(A)(33) OF THE ACT AND THE TERM 'STDATE' AS DE-
FINED IN SECTION 101(A)(36) OF THE ACT SHALL BE DEEMED
TO INCLUDE THE NORTHERN MARIANA ISLANDS FOR THE PURPOSE
OF SATISFYING THE RESIDENCE AND PHYSICAL PRESENCE RE-
QUIREMENTS CONTAINED:"

IN ORDER TO MAKE SECTION 506(C) CONFORM TECHNICALLY WITH
SECTION 101(A)(24), OF THE IMMIGRATION AND NATIONALITY ACT,
DEFINING "NATURALIZATION COURT", IT IS RECOMMENDED THAT
THE FOLLOWING BE INSERTED IMMEDIATELY BEFORE "SHALL
HAVE JURISDICTION": "SHALL BE INCLUDED AMONG THE COURTS
SPECIFIED IN SECTION 310(A) OF THE IMMIGRATION AND
NATIONALITY ACT AND"

ONE OF THE PRACTICAL THOUGHTS WHICH OCCURS TO US REGARD-
ING THE NARROW JURISDICTION OF THESE NATURALIZATION COURTS
IS WHETHER THERE OUGHT TO BE PROVISION FOR IMMIGRATION
AND NATURALIZATION OF SPOUSES AND CHILDREN OF UNITED STATES
CITIZENS WHO ACQUIRED CITIZENSHIP OTHER THAN UNDER ARTICLE
III, WHO ARE MEMBERS OF THE UNITED STATES ARMED FORCES.
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TO HICOMTERPACIS/STATUS LNO PRIORITY
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UNCLAS FINAL SECTION OF 3 STATE 271801/3
PASS TO HERMAN MARCUSE

TAKEN ALL IN ALL, WE RECOMMEND REEXAMINATION OF THE JUSTIFICATION FOR PROVIDING EXCEPTIONALLY FOR NATURALIZATION ~~IN~~ COURTS IN THE NORTHERN MARIANA ISLANDS WITH JURISDICTION TO NATURALIZE ONLY PERSONS WHO WERE CLASSIFIABLE AT ONE TIME FOR IMMIGRATION PURPOSES AS "IMMEDIATE RELATIVES". WE URGE THAT THE DRAFTERS, AFTER MAKING AN INTELLIGENT CHOICE, ABIDE BY THE NORMAL CONSEQUENCES OF INCLUDING THE NORTHERN MARIANA ISLANDS IN THE UNITED STATES OR OF EXCLUDING THEM THEREFROM. FACILITATING IMMIGRATION OF IMMEDIATE RELATIVES INTO THE NORTHERN MARIANS IN ORDER TO KEEP FAMILIES TOGETHER, BUT WITHOUT MAKING PROVISION FOR THEIR NATURALIZATION AS UNITED STATES CITIZENS IN COURTS OF THE COMMONWEALTH, MAY BE THE ONLY REALISTIC SOLUTION. (SIGNED) FOR THE COMMISSIONER SAM BERSEN, GENERAL COUNSEL. UNQUOTE. INGERSOLL
BT

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