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United States Department of State

Washington, D.C. 20520

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Dear Mr. Stockman:

This responds to a request from your office for comments on a proposed presidential proclamation concerning the "Application of Certain Laws of the United States to Citizens of the Northern Mariana Islands." Sections 19 and 20 of Public Law 98-213 (December 8, 1983) authorize the President, subject to certain limitations, to provide by proclamation that the requirements of U.S. citizenship or nationality in certain statutes of the United States "shall not be applicable to the citizens of the Northern Mariana Islands."

Under the proposed proclamation, citizens of the Northern Mariana Islands would not be subject to citizenship requirements found in 183 separate statutory provisions and Civil Service Rules VII and VIII, relating to the uniformed services, federal employment, protection and services in foreign countries, commerce, political and civil rights, and federal programs and benefits. The Department of State considers that the very broad approach taken by the proposed proclamation is inappropriate for the reasons stated below. We would support, however, a more carefully drawn proclamation suspending federal statutory citizenship requirements where such requirements have caused Northern Marianas citizens particular hardship.

The principal objection to the proposed proclamation is its very broad scope; for most practical purposes it would confer the benefits of U.S. citizenship upon citizens of the Northern Marianas prior to termination of the Trusteeship. This would conflict with historical U.S. practice (e.g., Alaska, Hawaii, the Philippines, Puerto Rico, Guam) where the collective extension of U.S. citizenship or nationality to the inhabitants has been linked closely to the acquisition of U.S. sovereignty over the area concerned.

The Honorable
David A. Stockman,
Director,
Office of Management and Budget,
Washington, D.C. 20530.



In addition, the United States is obligated under Article 11 of the Trusteeship Agreement to provide citizenship of the Trust Territory to the inhabitants. An outright grant of U.S. citizenship would not be compatible with that obligation, nor would the proposed proclamation, which is tantamount to a wholesale grant of citizenship for very broad purposes, many of which are unrelated to the situation of persons in the Northern Marianas themselves, but which affect the ability of the United States to conduct relations with foreign governments worldwide. Such an approach could be regarded by the United Nations and the international community as an inappropriate step toward annexation of the islands prior to termination of the Trusteeship. The Department, therefore, recommends strongly that a more selective proclamation be drawn up, suspending statutory U.S. citizenship requirements as needed to alleviate specific instances of hardship for citizens of the Northern Marianas. Such an approach would be more consistent with our obligations under the Trusteeship Agreement.

Congress expressly authorized the President in making such proclamations to be selective in determining which statutory citizenship requirements shall be suspended.

Section 20 of Public Law 98-213 provides:

- (a) The President may issue one or more proclamations under the authority of this Act.
- (b) When issuing such proclamation or proclamations the President-
 - (1) shall take into account:
 - (i) the hardship suffered by the citizens of the Northern Mariana Islands resulting from the fact that, while they are subject to most of the laws of the United States, they are denied the benefit of those laws which contain a requirement of United States citizenship or nationality;

- (ii) the responsibilities, obligations, and limitations imposed upon the United States by international law;
- (2) may make the requirement of United States citizenship or nationality inapplicable only to those citizens of the Northern Mariana Islands who declare in writing that they do not intend to exercise their option under section 302 of the Covenant to become a national but not a citizen of the United States;
- (3) may make the requirement of a United States citizenship or nationality inapplicable only in the Northern Mariana Islands;
- (4) may retain the requirement of United States citizenship or nationality with respect to parts of a statute or portion thereof.

Accordingly, the Department believes that a more selective proclamation, tailored to alleviate specific hardships resulting from the application of U.S. laws in the Northern Marianas, would be more in keeping with the intent of Congress, as expressed in Public Law 98-213. Because the President has authority to issue one or more proclamations under the Act, instances of demonstrated hardship which may arise could be dealt with in later proclamations, if necessary.

Even if it is decided to issue a broad-scoped proclamation, certain statutory citizenship provisions related to the conduct of foreign relations should be retained. The Department proposes, therefore, that the following provisions be excluded from any proposed Presidential proclamation.

Statutes relating to federal employment. Sections 103, 301, 312, 403, 409, 504, 608, 901, 903, 904 and 1101 of Public Law 96-465, 94 Stat. 2071 (22 U.S.C. 3903, 3941, 3952, 3963, 3969, 3984, 4008, 4081, 4083, 4084 and 4131). These provisions are found in the Foreign Service Act of 1980, in which Congress updated and consolidated the basic authorities of the President and Secretary of State to provide for a career foreign service to assist them in the day-to-day conduct of foreign affairs.



For example, Section 3941 provides that "(o)nly citizens of the United States may be appointed to the Service..." except for consular agents or foreign national employees. This reaffirms and carries forward a similar requirement found in the predecessor Acts of 1924 and 1946. Thus, Congress has provided for a professional career Foreign Service, available for worldwide assignment and separate from the regular Civil Service, and has specified that its members "...should be representative of the American people, aware of the principles and history of the United States and informed of current concerns and trends in American life..." 22 U.S.C. 3901(a)(4). Considering the responsibilities of members of the Foreign Service in representing the United States in the conduct of diplomatic and consular relations with foreign governments, often under dangerous or inhospitable circumstances, it is reasonable to require that members of the Foreign Service be U.S. citizens, except as provided above, whatever the requirements are for other types of federal employment. In the Department's judgment, the ability of members of the Foreign Service to carry out their tasks abroad, in many instances, would be seriously impaired were they not citizens of the country they represent. The citizenship requirements throughout the Foreign Service Act, therefore, should be retained.

Statutes relating to protection and services in foreign countries. The statutes listed in this section of the proposed presidential proclamation affect the authorities and obligations of the United States in the conduct of its relations with foreign governments and their citizens, unlike other sections of the proposed proclamation which concern mainly domestic affairs.

Among these are certain provisions for which the Department of State has a primary responsibility, e.g., 22 U.S.C. 2370(e)(1) and (2) (the Hickenlooper Amendment), which authorizes the President to suspend foreign assistance to a country which has nationalized or expropriated property owned by U.S. citizens, without providing them speedy compensation. Similarly, another provision, 22 U.S.C. 2151n-1, expresses the "sense of the Congress that the Secretary of State should make every effort to seek the early release of American citizens unjustifiably held in foreign jails..." and report annually thereon



to the Congress. Apart from the authority to extend these and other provisions to cover citizens of the Northern Marianas as a matter of domestic U.S. law, it must be noted that the authority of the United States under international law to extend protection and services to persons in foreign countries requires that such persons be U.S. citizens. In many instances, the rights being protected are those accorded to U.S. citizens under treaties of the United States, e.g., the various friendship, commerce and navigation (FCN) treaties; see also, the Vienna Consular Convention, Art. 36, 21 U.S.T. 77 (consular officers have a right to visit nationals of the sending state who are in prison, custody or detention). If the United States were to rely upon the proposed proclamation to assert on behalf of citizens of the Northern Marianas these and similar rights accorded U.S. citizens under international law, statutes and treaties of the United States, such an approach would not be consistent with long-established principles of international law and practice, and would likely be rejected by the international community.

As noted above, Congress provided that the President shall take account of "the responsibilities, obligations, and limitations imposed upon the United States by international law..." Public Law 98-213, section 20(b)(1)(ii). Congress also provided that, in the event the President does not issue a proclamation within six months of the effective date of the Act, then statutory citizenship requirements shall not apply to citizens of the Northern Marianas. Id., section 21. Congress expressly exempted from the scope of that provision, however, statutes relating to, inter alia, "the diplomatic protection of, and services to, citizens or nationals of the United States in foreign countries..."

There may be certain provisions related to such protection and services which further analysis would demonstrate to be both necessary and proper subjects for a future proclamation. The wholesale suspension of citizenship requirements for such purposes, however, as proposed in the present proclamation, would not be consistent with the international obligations of the United States.

Furthermore, it should be noted that under Article 11 of the Trusteeship Agreement the United States is authorized to afford diplomatic and consular protection to inhabitants



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of the Trust Territory when they are outside its limits. As a matter of international law, therefore, the United States, acting in its capacity as the Trustee Power, already has ample authority to afford appropriate diplomatic and consular protection to citizens of the Northern Marianas, on an equal basis with other inhabitants of the Trust Territory.

Statutes relating to political and civil rights. In Public Law 98-213, Congress excluded statutes relating to political and civil rights from the scope of section 21, which would provide for the automatic suspension of U.S. citizenship requirements in most other statutes applicable in the Northern Marianas, if the President does not take action within six months. As noted above with respect to laws relating to protection and services in foreign countries, Congress manifestly intended that the President be selective in suspending the citizenship requirement with respect to this type of statute; the wholesale approach of the proposed proclamation would be inappropriate. Because most of the statutes in this area fall within the responsibilities of the Attorney General, we defer to the views of the Department of Justice on this matter, subject to the following comments.

Under the provisions of 18 U.S.C. 4100 et seq., prisoners may be transferred to and from United States and certain foreign countries with which there are prisoner transfer treaties in force. Section 4100(b) provides that an offender may be transferred from the United States only to a country of which he is a citizen or national. Furthermore, only an offender which is a citizen or national of the United States may be transferred to the United States. This legislation was adopted by Congress (Public Law 95-144, 91 Stat. 1212, Oct. 28, 1977) in order to implement certain treaties in force for the United States. The fact that only citizens of the respective parties are eligible for transfer is the result of internationally negotiated agreements between the parties. An attempt by the United States unilaterally to extend the benefits of such treaties to citizens of the Northern Marianas would be inconsistent with our treaty obligations. The Department considers, therefore, that U.S. citizenship must be retained for persons seeking to transfer under one of the various treaties in force.



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For the reasons set forth above, the Department recommends that a more selective proclamation be drawn up, suspending U.S. citizenship requirements in those instances where the operation of U.S. law has resulted in particular hardships for citizens of the Northern Marianas. We expect that such statutes principally will be concerned with those matters within the exclusive jurisdiction of the United States, and will not impair "the responsibilities, obligations, and limitations" of the United States under international law, or in the conduct of its foreign relations. To the extent that a broader proclamation is issued, the Department requests that the specific statutes and subject areas discussed above be excluded from the scope of such proclamation.

Sincerely,

W. Tapley Bennett, Jr.
Assistant Secretary
Legislative and Intergovernmental Affairs