

VICTOR FORTUNO

From: Charles Greenfield [chgreen@LASHAW.ORG]
Sent: Saturday, March 17, 2007 1:43 AM
To: VICTOR FORTUNO
Cc: Charles Greenfield
Subject: 2007 LSC Regulatory Agenda

Victor Fortuno
 General Counsel
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 Legal Services Corporation
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Dear Mr. Fortuno:

I understand that the Operations and Regulations Committee of the LSC Board will consider a regulatory agenda for the remainder of 2007. LSC President Helaine Barnett has requested that we submit any suggestions concerning the regulatory agenda. I have the following suggested change to an existing LSC regulation.

Section 1626.10(a), as interpreted by LSC Office of Legal Affairs in External Opinions # EX-2004-1004 and EX 2001-1010, erroneously denies eligibility to citizens of the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau who reside in the United States.

Section 1626.10 provides an exception to the alien eligibility restrictions contained in 1626.5. Section 1626.10(a) states:

§ 1626.10 Special eligibility questions.
 (a) This part is not applicable to recipients providing services in the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, or the Republic of the Marshall Islands.

However, 1626.10(a) erroneously limits the special eligibility exemption to "recipients providing services" in the three countries, plus the Commonwealth of the Northern Mariana Islands. The special eligibility exemption should properly apply to all citizens of the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau, whether residing in those countries or residing in the United States.

Under this current regulation, LSC funds representation of citizens of the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau if they reside in those countries, but not if they reside in the United States. This is a result not intended by Congress. Section §1626.10(a) is in violation of the Compacts of Free Association between the U.S. and the three countries, the understandings among the parties at the bargaining table for the Compacts, and U.S. policy. In sum, (1) citizens of the Trust Territory, and later the Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau who reside in the U.S. have historically been eligible for legal aid services, assuming they are otherwise financially eligible; (2) the Legal Services Corporation (LSC) Act (Pub. L. 93-355 (July 25, 1974)) specifically mentions the Trust Territory of the Pacific Islands to be included in LSC funding; (3) the Compacts of Free Association, both original and as amended, provide for LSC funding for the Freely Association States (FAS); (4) Congress never intended in enacting alien provisions made applicable to LSC in an appropriations act in 1996 (Pub. L. 104-134, 110 Stat. 1321 (1996)) to change the eligibility for legal aid for citizens of the Freely Associated States residing in the United States. Indeed, if you made this language in the 1996 appropriations act (repeated each year in subsequent appropriation acts) applicable to FAS citizens, then FAS citizens residing in FAS would not be eligible for legal aid either, a result clearly contrary to the Compacts; (5) Section 105(f)(1)(C) of the original

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Compact between the U.S. and the FSM and the Marshalls states that it is "not the intent of Congress to cause any adverse consequences for an affected area", which are defined as Hawaii, Guam, the CNMI and American Samoa; (6) the parties negotiating the Compacts did not agree that FAS citizens, made eligible for legal aid under the Compacts, would be ineligible for legal aid if living in the U.S. If the U.S. desired to change the eligibility of FAS citizens residing in the U.S. to legal aid services, then the appropriate approach would have been to bring up this issue in negotiations on the Compact or in some other diplomatic manner. Further, I note that 48 USC 1921d (b)(4) states that "[f]ederal agencies providing programs and services to the Federated States of Micronesia and the Republic of the Marshall Islands shall coordinate with the Secretaries of the Interior and State regarding provision of such programs and services." As far as I know, the Legal Services Corporation did not coordinate with the Secretaries of Interior and State when it decided to change past established practice and make FAS citizens residing in the U.S. ineligible for legal aid.

On September 29, 2006, the U.S. Senate unanimously approved S. 1830 that would make clear Congress intent that FAS citizens residing in the U.S. should be eligible for LSC assistance. While the bill did not pass the House due to the end of the last Congress, the report of the Senate Committee on Energy and Natural Resources states this issue plainly:

Section 5 clarifies that section 105(f)(1)(C) of the CFAAA is intended to continue eligibility for the programs and services of the Legal Services Corporation for FSM and RMI migrants who legally reside in the United States. Legal Services Corporation eligibility was extended by the first Compact Act in 1986 (P.L. 99-239), but in 1996, without any further action by Congress, the Legal Services Corporation, by rule, terminated the eligibility of FSM and RMI migrants. Section 104(e) of the original Compact Act, and of the CFAAA, state that it is 'not the intent of Congress to cause any adverse consequences for an affected area,' which are defined as Hawaii, Guam, the CNMI, and American Samoa. The Legal Services Corporation is one of those programs which had assisted local communities, in both the 'affected areas' and in the mainland U.S., in responding to the impacts and needs of FSM and RMI citizens who were residing in U.S. communities. This section would restore eligibility as it existed from 1986 to 1996. Senate Report 109-237.

LSC's action in writing 1626.10(a) so narrowly so as to exclude those FAS citizens who reside in the U.S. is unsupported by existing law and should be changed in 2007.

In Hawaii, where between 7,000 and 10,000 citizens of the FSM, Marshalls and Palau reside, we cannot use either LSC or non-LSC funds to assist these residents. We have many such residents who desperately need our services. This is an intolerable situation that needs to change. Preventing residents from having access to a legal aid lawyer results in abuse. They have no way to resolve certain critical civil legal matters and those that seek to exploit or abuse them know that fact.

Perhaps you would agree that it is not only an intolerable situation but also inhumane to provide by treaty that citizens of the FSM, Marshalls and Palau can freely travel and work in the U.S., can join the various branches of the U.S. Military and can fight for the U.S. in Iraq and Afghanistan, but are prevented from having access to legal aid. To add insult to injury, legal aid programs are prevented from even using non-Federal funds to assist them.

I respectfully request that the LSC Board include a revision to section 1626.10(a), allowing for eligibility for FAS citizens residing in the U.S., to its 2007 regulatory agenda.

Thank you for your consideration.

Sincerely,

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