



OFFICE OF LEGAL AFFAIRS

ADVISORY OPINION
Advisory Opinion # AO-2014-008

Date: December 5, 2014

Subject: Applicability of Section 504(a)(11) and Part 1626 Alienage Restrictions in American Samoa

QUESTION PRESENTED

Whether the alienage restrictions in section 504(a)(11) of the Legal Services Corporation's (LSC or the Corporation) fiscal year 1996 (FY 1996) Appropriations Act and 45 C.F.R. Part 1626 apply to services provided in American Samoa by an LSC recipient.

BRIEF ANSWER

No. The alienage restrictions in section 504(a)(11) of LSC's FY 1996 Appropriations Act and 45 C.F.R. Part 1626 do not apply to services provided in American Samoa by an LSC recipient because those restrictions are based on provisions of the Immigration and Nationality Act (INA) that do not apply to people entering or remaining in American Samoa.

BACKGROUND AND ANALYSIS

LSC has designated American Samoa as a service area for possible funding in 2015. American Samoa is a territory of the United States that has been administered by the U.S. Department of the Interior's Office of Insular Affairs since 1956.¹ Individuals born in American Samoa are considered nationals (but not citizens) of the United States, and are therefore not "aliens" under the INA. 8 U.S.C. §§ 1101(a)(3), 1408(1). Approximately 35% of the population of American Samoa are not U.S. nationals.² The INA defines the United States as "the

¹ *Insular Area Summary for American Samoa*, U.S. Department of the Interior, <http://www.doi.gov/oia/islands/american-samoa.cfm> (last visited Nov. 11, 2014). Enacted in 1962, the Samoan Omnibus Act provides:

Upon request of the Secretary of the Interior—(a) the head of any Federal department, agency, or corporation may, notwithstanding any other provision of law, extend to American Samoa, without reimbursement, such scientific, technical, and other assistance under any program which it administers as, in the judgment of the Secretary of the Interior, will promote the welfare of American Samoa.

48 U.S.C. § 1666.

² *Profile of Selected Social Characteristics: 2010: 2010 American Samoa Demographic Profile Data*, U.S. Census Bureau, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DPAS_ASD_P2&prodType=table (last visited Nov. 11, 2014).

continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands” – but not American Samoa.³ 8 U.S.C. § 1101(a)(38). As a result, U.S. immigration requirements for entering and working in the United States generally do not apply in American Samoa.⁴ The government of American Samoa, rather than the U.S. government, governs the admission of aliens to American Samoa, and the rights and status of individuals entering and remaining in American Samoa are governed by the laws of American Samoa. Am. Samoa Code Ann. tit. 41, §§ 41.0201–49.0920 (governing citizenship, alienage, and immigration). As a result, American Samoa’s Immigration Office and Immigration Board manage a variety of core immigration functions, including identification issuance, work authorizations, and enforcement of American Samoan immigration laws.⁵ The mission statement of American Samoa’s Department of Legal Affairs includes “protecting the borders of the Territory from illegal immigrants.”⁶ In addition, American Samoan immigration agencies seldom interact with U.S. immigration agencies, as no U.S. immigration agency has an office in American Samoa.⁷

In section 504(a)(11) of LSC’s FY 1996 Appropriations Act, Congress prohibited LSC recipients from representing “aliens” with specific exceptions based on the status of an alien under specific provisions of the INA. Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, tit. V, § 504(a)(11), 110 Stat. 1321, 1321-54 to -55 (1996) (incorporated by reference in LSC’s annual appropriations thereafter, *see, e.g.*, Consolidated Appropriations Act, 2014, Pub. L. 113-76, div. D, tit. III, § 504(a)(11), 128 Stat. 5 (2014) (LSC’s FY 2014 appropriation)). Those provisions of the INA, however, like the INA generally, are based on the INA’s definition of the “United States” and do not apply to entry or presence in American Samoa. Therefore, section 504(a)(11) does not apply to the provision of services in American Samoa by an LSC recipient.

LSC implemented section 504(a)(11) through 45 C.F.R. Part 1626, including the statutory exceptions based on the INA. Part 1626 does not apply to American Samoa because

³ One section of the INA contains a broader definition of the United States as including “the Canal Zone, and all territory and waters, continental and insular, subject to the jurisdiction of the United States.” 8 U.S.C. § 1185(c). Although that definition includes American Samoa, it is limited to that one section and not incorporated in the provisions of the INA referenced in the LSC restrictions.

⁴ Government Accountability Office, GAO-10-638, *American Samoa: Performing a Risk Assessment Would Better Inform U.S. Agencies of the Risks Related to Acceptance of Certificates of Identity* 8 (2010) (GAO Report), available at <http://www.gao.gov/new.items/d10638.pdf>. The GAO explained that “U.S. immigration requirements for entering and working in the United States generally do not apply in American Samoa and the American Samoa government, rather than the U.S. government, governs the admission of aliens to American Samoa.” *Id.*

⁵ *Id.* at 11.

⁶ *Department of Legal Affairs*, American Samoa Government, <http://americansamoa.gov/index.php/2012-04-25-19-44-32/2012-04-25-19-52-04/departments/legal-affairs> (last visited Nov. 12, 2014).

⁷ GAO Report at 9.

neither the text of the regulation nor its history evidence any intent to extend its reach to service areas in which those provisions of the INA do not apply.

CONCLUSION

The alienage restrictions in section 504(a)(11) of LSC's FY 1996 Appropriations Act and 45 C.F.R. Part 1626 do not apply to the provision of services in American Samoa by an LSC recipient because those restrictions are based on INA provisions that do not apply to people entering or remaining in American Samoa.

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