



## Decision

**Matter of:** State Department - Rest and Recuperation Travel

**File:** B-302728

**Date:** October 1, 2004

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### DIGEST

A State Department certifying officer located in the United States Embassy, Kiev, Ukraine, may certify payment of a Foreign Service employee's travel expenses to attend the funeral of a close family member, based on the department's authority to grant "rest and recuperation" travel under the Foreign Service Act of 1980, Pub. L. No. 96-465, *codified in* 22 U.S.C. ch. 52.

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### DECISION

A State Department certifying officer for the United States Embassy in Kiev, Ukraine, Ms. Joyce E. Coates, requests an advance decision under 31 U.S.C. § 3529 regarding the use of State Department funds for employee rest and recuperation (R&R) travel. The certifying officer questions whether it is proper to certify payment of appropriated funds for R&R travel of an employee of the Embassy in Kiev, Ms. Oluwatoyin Martschenko, in order to attend the funeral of her mother-in-law. As explained below, we find that the certifying officer should certify the employee's R&R travel expenses for payment.

### BACKGROUND

The employee and her husband are members of the Foreign Service and are stationed at the U.S. Embassy in Kiev for a three-year posting. In December 2003, the employee, together with her husband and their children, flew to New York City to attend the funeral of her husband's mother. The Embassy paid her husband's round trip travel expenses as "Emergency Visitation Travel" (EVT), pursuant to established department practices and procedures.<sup>1</sup> The couple paid for their

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<sup>1</sup> The State Department's Foreign Affairs Manual (F.A.M.) defines EVT as "travel [of an eligible employee] at government expense to the United States or other locations

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children's transportation using personal funds. Embassy officials agreed to pay for the employee's travel expenses as R&R travel.<sup>2</sup> In January 2004, the Embassy asked the certifying officer to certify payment of those R&R travel expenses to a private vendor for the employee's travel expenses, but the certifying officer has not yet done so.

In her request to this Office, the certifying officer questions whether she should certify payment in this matter. She notes that "the 'purpose' of R&R is to grant employees and family members at designated hardship posts opportunity for relief from the harsh conditions imposed upon them. . . . Going to a funeral would not seem to meet the purpose of rest and recuperation." Letter from Joyce E. Coates to Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, GAO, Feb. 24, 2004 (received in GAO, Mar. 15, 2004). Moreover, the certifying officer is concerned that allowing the employee to use R&R travel to attend a family funeral would "circumvent" State Department policy and rules governing EVT in order to serve the "personal convenience" of the employee. *Id.*

In April 2004, we asked the State Department's Legal Adviser to provide us with his views on this matter. Letter from Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, GAO, to William H. Taft, IV, State Department Legal Adviser, Apr. 28, 2004. In July 2004, the Office of the Legal Adviser responded saying, among other things, that it is neither a requirement nor a practice of the department to evaluate the appropriateness of the personal activities of an employee or (eligible family members) while on R&R travel. Letter from Jamison Borek, Assistant Legal Adviser for Legislation and Management, State Department, to Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, GAO, July 20, 2004. In fact, the department has never before deemed an employee's or family member's proposed R&R travel inappropriate based on the department's assessment of the personal activities proposed or actually pursued during the R&R trip. *Id.* The Assistant Legal Adviser said, "Based on the facts of which we are aware, therefore, the Office of Legal Adviser does not believe that [the employee] should be refused reimbursement for R&R on the grounds that [her] attendance at her mother-in-law's funeral on the R&R trip renders the trip inappropriate for R&R." *Id.*

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in certain situations of family emergency." 3 F.A.M. § 3742 (T.L. No. PER-395, Feb. 28, 2001).

<sup>2</sup> The Foreign Affairs Manual defines R&R travel as "the travel of U.S. citizen employees of the Foreign Service and their families from their assigned post to the United States, or to other locations abroad which have different social, climatic, or environmental conditions than their assigned post." 3 F.A.M. § 3721 (T.L. No. PER-412, Aug. 17, 2001). *See also* 3 Foreign Affairs Handbook-1 § H-3726.3.a (T.L. No. POH-081, Feb. 26, 2002) (hereinafter, F.A.H.).

## DISCUSSION

In order to determine whether State Department funds are legally available to pay the employee's travel expenses, we need to understand the department's authority with respect to R&R travel and EVT leave and the expenses associated with them, as well as the policies and procedures established by the department under that authority. The State Department derives its authority to grant leave and travel reimbursements to Foreign Service employees and their families from the Foreign Service Act of 1980, Pub. L. No. 96-465, 94 Stat. 2071 (Oct. 17, 1980), *codified in* 22 U.S.C. ch. 52. Section 901 of that act authorizes the department to pay for, among other things, the R&R travel of members of the Foreign Service and their families:

“(6) rest and recuperation travel of member[s] of the [Foreign] Service who are United States citizens, and members of their families, while serving at locations abroad specifically designated by the Secretary for purposes of this paragraph, to--

“(A) other locations abroad having different social, climatic, or other environmental conditions than those at the post at which the member of the Service is serving, or

“(B) locations in the United States;

“except that, unless the Secretary otherwise specifies in extraordinary circumstances, travel expenses under this paragraph shall be limited to the cost for a member of the Service, and for each member of the family of the member, of 1 round trip during any continuous 2-year tour unbroken by home leave and of 2 round trips during any continuous 3-year tour unbroken by home leave.”

Pub. L. No. 96-465, § 901, 94 Stat. at 2125, *codified at* 22 U.S.C. § 4081.<sup>3</sup> Section 901 also provides for EVT:

“(9) round-trip travel from a location abroad for purposes of family visitation in emergency situations involving personal hardship.”

Pub. L. No. 96-465, § 901, 94 Stat. at 2126, *codified at* 22 U.S.C. § 4081. Section 206 of the act provides that the department may “prescribe such regulations as the Secretary deems appropriate to carry out functions under this Act.”

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<sup>3</sup> The 1980 act consolidated, refined, and recodified the laws relating to the Foreign Service. S. Rep. No. 96-913, 1-3 (1980). The language quoted above in section 901(6)(B) of the 1980 act (authorizing R&R travel to “locations in the United States”) actually originated in section 407 of the Foreign Relations Authorization Act for Fiscal Year 1979. Pub. L. No. 95-426, § 407, 92 Stat. 963, 980 (Oct. 7, 1978).

Pub. L. No. 96-465, § 206, 94 Stat. at 2079, *codified at* 22 USC 3926(a). To implement these provisions of the Foreign Service Act, the department issued the Foreign Affairs Manual (F.A.M.) and the Foreign Affairs Handbook (F.A.H.).<sup>4</sup> Under the Foreign Affairs Manual and Handbook, Foreign Service employees assigned to certain foreign posts, such as Kiev, for three-year periods, are permitted to take two R&R trips during the assignment, “provided that the purpose of rest and recuperation travel is met.” 3 F.A.H.-1 § H-3726.3.a (T.L. No. POH-081, Feb 26, 2002). There is no guidance given with regard to what would be deemed restful and recuperative travel. EVT is authorized for certain specific circumstances, *e.g.*, death of a close relative, as is the case here. 3 F.A.M. §§ 3743, 3744(1) – (3) (T.L. No. PER-395, Feb. 28, 2001). Generally, for both R&R travel and EVT, an employee must seek approval in advance. 3 F.A.H.-1 ch. H-3726 (T.L. No. POH-081, Feb. 26, 2002); 3 F.A.M. § 3746.2-1 (T.L. No. PER-395, Feb. 28, 2001).

The legislative history for the R&R travel provision (paragraph 6 quoted above) directs the department to implement the provision in a way that appropriately “benefits . . . employee morale.” H.R. Conf. Rep. No. 95-1535, at 51 (1978). The legislative history of the EVT provision (paragraph 9 quoted above) indicates that EVT is intended to mitigate the “personal hardship” which is incurred when great distance separates families as a result of assignments in the Foreign Service. S. Rep. No. 96-913, at 76 (1980). While generally all members of a family who reside at the employee’s post of assignment may be approved for R&R travel, ordinarily only one member of a family is authorized EVT.

Under the facts presented here, the employee, as required by the department’s regulations, sought and obtained permission for R&R travel. The certifying officer is concerned that allowing the employee to use R&R travel to cover the expenses of attending a funeral is not consistent with the purposes of R&R travel and circumvents the department’s regulations on EVT. As noted above, neither the statutes nor the regulations delineate the allowable uses of R&R travel. Here, the employee applied to use it to attend a family funeral, and the employee’s supervisor approved it. The legislative history of the R&R travel provision shows that Congress intended to provide Foreign Service personnel and their families with relief from the isolation and separation from family that necessarily arises from being stationed at overseas posts. B-214549, Oct. 5, 1984, *citing* S. Rep. No. 96-913, at 76 (1980).

What is important here is that, in accordance with the statute and the department’s regulations, responsible officials within the Kiev Embassy approved the use of R&R travel for the employee in advance, with full knowledge of the circumstances. Furthermore, upon review within the department, that approval has not been

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<sup>4</sup> These volumes are statutory regulations, issued under the authority of 22 U.S.C. § 4081(5)(B). B-251231, n.2, Sept. 2, 1993; B-212445, Nov. 17, 1986. *See also* 3 F.A.M. §§ 1111.3, 1112, 1112.2 (T.L. No. PER-274, July 6, 1995).

countermanded. Letter from Jamison Borek, Assistant Legal Adviser for Legislation and Management, State Department, to Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, GAO, July 20, 2004. Instead, the department has advised that, within its discretion under the law, it does not regard it necessary or appropriate to assess the purposes for which eligible employees and family members take R&R travel. *Id.* This endorsement of the Embassy staff's approval of R&R travel explicitly recognized that the purpose of the travel was to attend the funeral of a close family relative, notwithstanding the department's EVT regulations. *Id.* See also, E-mail from Anita A. Brown, Office of Employee Relations, Employee Programs Division, State Department, to Jennifer Bonner, Management Counselor, Kiev Embassy, Ukraine, Jan. 21, 2004 (the employee "is eligible to receive the 2nd R&R. [While] R&R is not supposed to be meant for bereavement travel . . . you are correct that employees (and eligible family members) use R&R for a variety of reasons and we should not be in the business of policing what they do while on R&R."). Although not all would agree that attending a funeral provides "rest and recuperation," we believe the purposes of R&R travel are broad enough to encompass this use, if it is authorized by appropriate department officials acting under the Foreign Affairs Manual and Handbook.

The certifying officer also raises a number of other concerns to question whether this R&R travel voucher should be certified. However, those points need not be addressed in detail here as they do not alter our conclusion. Some of them relate to policy matters, which are for the department to decide,<sup>5</sup> and others reflect policy decisions that the Congress has already determined in the law.<sup>6</sup>

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<sup>5</sup> For example, the certifying officer is concerned that the employee may have forfeited or exhausted her right to further R&R travel from the Kiev Embassy posting—possibly when she failed to take R&R at a particular time. However, the department's regulations do not dictate when the travel must be taken, only when it generally may not be taken, such as within the first or last six months of the posting. 3 F.A.M. § 3727 (T.L. No. PER-412, Aug. 17, 2001). The certifying officer is also concerned about the financial and budgetary implications of allowing R&R travel to be used in circumstances where EVT might be used. Under the Foreign Affairs Manual, both R&R travel and EVT are funded primarily from funds available to the post. 3 F.A.M. § 3726.3-2(a) (T.L. No. PER-415, Aug. 29, 2001); 3 F.A.M. § 3748.2.a(1) (T.L. No. PER-395, Feb. 28, 2001). It is the responsibility of the post administrative officials who approve the use of R&R travel to use this authority wisely in order to avoid creating financial and budgetary problems for the post as a consequence of the R&R travel that they approve.

<sup>6</sup> The certifying officer is concerned that allowing Foreign Service employees who are authorized to take R&R travel to use it for circumstances in which EVT might be used creates inequities vis-à-vis those Foreign Service employees who are not entitled to R&R travel benefits. The simple answer to this is that, in the law,

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## CONCLUSIONS

The Foreign Service Act of 1980 entrusts the department with broad discretion in the use of R&R funds. The record indicates that the employee sought and obtained administrative permission for R&R funded travel in order to attend the funeral of her mother-in-law. The department has since re-examined and reaffirmed the original approval of the employee's request. There is no indication in the record that the employee or the department failed to comply with any applicable statutory or regulatory requirements. The department's position is consistent with the terms and purposes of the applicable statutes and regulations, and there is no reason for us to question the department's interpretation or application of the Foreign Service Act of 1980 in this regard. Consequently, the certifying officer should certify the payment of the employee's R&R travel expenses.

/SIGNED/

Anthony H. Gamboa  
General Counsel

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Congress has expressly provided an extra benefit to Foreign Service employees stationed at hardship posts, and this use of that benefit falls within the broad purposes of the statute, subject to the Department's exercise of the discretion Congress granted it. *See* Foreign Service Act of 1980, §§ 206, 901, Pub. L. No. 96-465, 94 Stat. 2071, 2079, 2125 (Oct. 17, 1980), *codified in* 22 U.S.C. §§ 3926(a), 4081.