



OFFICE OF LEGAL AFFAIRS
EXTERNAL OPINION

External Opinion # EX-2004-1004

To: Lori Shimabukuro
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924 Bethel Street
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Date: June 2, 2004

Subject: **Eligibility of Citizens of FSM and RMI for Legal Assistance under Compact of Free Association Amendments**

You asked this Office for an Opinion as to whether recent amendments to the Compact of Free Association have changed the eligibility of citizens of the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI) for legal assistance by LSC grant recipients.

Brief Answer

No, the amendments to the Compact of Free Association (and the implementing U.S. law) do not change the eligibility of citizens of the FSM and the RMI for legal assistance by LSC grant recipients. Such persons remain eligible for service outside of FSM and RMI only to the extent they otherwise meet the citizenship/alienage eligibility criteria set forth in LSC's regulations at 45 CFR Part 1626.

Background

Persons in the Republic of the Marshall Islands ("RMI") and the Federated States of Micronesia ("FSM") may receive legal services assistance pursuant to the Compact of Free Association between the United States and the RMI and FSM, which was adopted into law by the Compact of Free Association Act of 1985 ("CFA Act") (P.L. 99-239, codified at 48 U.S.C. 1901, et seq.). Section 105(h)(1)(A) of the CFA Act (codified at 48 U.S.C. 1905(h)(1)(A)) provides that ". . . the programs and services of the following agencies shall be made available to the Federated States of Micronesia and to the Marshall Islands . . . (A) the Legal Services Corporation" Persons in the Republic of Palau may receive legal assistance pursuant to a separate Compact of Free Association. The implementing act for that Compact makes section 105 of the CFA Act applicable to the Republic of Palau. 48 U.S.C. 1932(b).

The eligibility of persons in the RMI, FSM and Republic of Palau to receive legal assistance from LSC grantees is addressed in the regulation at section 1626.10, which reads:

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.

As explained in the preamble to the final rule adopting the current regulatory language:

The effect of this [rule is] to make financially eligible citizens of the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau only eligible for legal services from the recipients serving those areas. . . . They would not be eligible for services from any other recipients unless they also came within one of the categories of eligible aliens listed in section 1626.5. . . . 62 FR 19413 (April 21, 1997).

This analysis and conclusion is based upon the language of the CFA Act which states that the services shall be made available to the respective *countries* (the FSM, the RMI and Palau) rather than to the *citizens* of those countries. LSC has interpreted this language to provide authority for the provision of services within those areas, but not as conferring individual eligibility for services to the citizens of the covered areas without reference to where the service was to be provided.

Recently, the United States Government has negotiated amendments to the Compact of Free Association with FSM and RMI and extend several portions of the Compact otherwise set to expire. The amendments were enacted into law with the passage and signing of House Joint Resolution 63, which became Public Law number P.L. 108-188. According to the House Report accompanying the law:

H.J. Res. 63: (1) extends U.S. financial and program assistance to those island nations, but fundamentally restructures the way it is provided, to increase fiscal accountability and economic planning; (2) prepares for the end of grant assistance in 2023 by capitalizing a trust fund for each nation; (3) secures certain U.S. strategic interests, such as the U.S. “defense veto” and extended U.S. access to the Kwajalein atoll missile testing range; and (4) modifies and clarifies the unique U.S. immigration status enjoyed by FSM and RMI citizens, to address concerns primarily related to U.S. homeland security.

H. Report 108-262 at 72-73. LSC-funded legal assistance is authorized in the Compact Amendments Act in section 105. That section provides, in pertinent part:

In addition to the programs and services set forth in section 221 of the Compact, and pursuant to section 222 of the Compact, the program and services of the following agencies shall be made available to the Federated States of Micronesia and to the Republic of the Marshall Islands: . . .

The Legal Services Corporation

Pub. L. 108-188, Section 105(f)(1)(C). The House Report accompanying the new law explains that this provision “[s]tates in paragraph (1) that certain programs and services (from the Legal Services Corporation, Public Health Service, and Rural Housing Service) be made available to the FSM and the RMI, pursuant to section 222 of the amended Compacts.” H. Rpt. 108-262 at 84.

Analysis

The Compact of Free Association Amendments Act of 2003 does not appear to make any amendment to the existing provisions of the Compact with respect to the availability of LSC funded legal services. Rather, the new law restates the authority for service found in the prior law. In the new law, as in the old, Legal Services Corporation legal assistance is “made available to the Federated States of Micronesia and to the Republic of the Marshall Islands” and not to the *citizens* of those countries. As such, we have no basis to conclude that the new Act effected any change in the prior law on this point. Accordingly, the existing regulatory provisions at 45 CFR §1626.10 remains unaffected by the Compact Amendments Act and in force. Citizens of those countries continue to be eligible for services when they are within the CFA countries, and are only eligible when they are outside of those countries to the extent that they otherwise meet the Part 1626 requirements.

Very truly yours,



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