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OGC Has Reviewed

Executive Registry

0-3940

Chief, [REDACTED]
Office of the General Counsel

25 April 1949

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[REDACTED] - Marriage of Personnel

1. Your memorandum of 30 March 1949 requests an opinion in regard to certain questions which are implicit in the enforcement of subject General Administrative Instruction.

2. [REDACTED], dated 13 January 1949, requires all employees at overseas posts who are contemplating marriage to a person of "foreign nationality, family, background, or connections", to obtain the permission of headquarters prior to taking the final step. Failure to obtain such permission results in automatic termination. For administrative convenience, the employee is also required to submit his resignation at the time permission is requested. Security, of course, is the reason for such official scrutiny. [REDACTED]

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3. It is assumed that the individual contracts signed by each employee do not contain any specific clause prohibiting marriage, for reasons of security, without the approval of the Agency.

4. In the first situation you have specified, where an employee resigns after permission to marry is denied by headquarters, we believe that a breach of contract has occurred through the voluntary action of the employee. This is true even though the employee is required by the instruction to submit his resignation in order to obtain permission, and final action on the resignation depends entirely upon an administrative decision. If the employee fails to seek permission to marry and is terminated in compliance with the provisions of the instruction, termination is the direct consequence of an act which is within his control and is therefore also a breach of contract. If the contract contains an express acknowledgment of a debt to the Government whenever termination results for reasons other than those beyond his control, the financial rights and obligations of the employee are clearly stipulated. Once the breach of contract is established, the employee is obligated to the Government for the expense of original travel obligated through either express contractual acknowledgment, or the operation of P.L. 600. This is true, of course, only in cases where the breach occurs prior to the completion of twelve months' duty. Your second question is answered accordingly.

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5. The government can waive recovery of the obligation imposed by law and terms of the contract only where the considerations of security or operational necessity overcome the legal requirements. In specific answer to your third question, under present regulations no one but the Director can grant such a waiver.

6. You have questioned the general propriety of raising a breach of contract or effecting a termination as the result of marriage. It is believed that our particular problem does not fall within the scope of those matters which are generally considered contrary to public policy. The basic question of security is fundamental to the existence of this Agency, founded as it is on broad provisions for national defense and the general welfare, so that reasonable regulations for the preservation of that security should not be subject to objection. The familiar outright prohibition against marriage applied by the Government in the case of West Point cadets and Annapolis midshipmen has not, as far as we know, been successfully challenged. An arbitrary prohibition against marriage based on security would have even greater justification. Our regulation is neither capricious nor arbitrary, and is not directed against marriage as an institution, or to a class, but only to specific individuals. For those reasons, we do not believe that this aspect of the problem presents any cause for concern.

7. The foregoing is a general statement to establish an approach to this problem. As a great variety of factual situations could arise to complicate individual cases, we would be pleased to assist with any specific cases presented.

LAWRENCE R. HOUSTON
General Counsel

LRH/nll

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