

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

{Grievant}

And

Department of State

Record of Proceedings

FSGB No. 2006-002

Date: June 2, 2006

**DECISION: JURISDICTION -
EXCISION**

For the Foreign Service Grievance Board:

Presiding Member:

Lois C. Hochhauser

Board Members:

Theodore Horoschak
Gail M. Lecce

Special Assistant:

Janet M. McGhee

Representative for the Grievant:

Pro Se

Representative for the Department:

Joanne M. Lishman.
Grievance Staff

Employee Exclusive Representative:

American Foreign Service Association

DECISION: JURISDICTION

HELD: The Board lacks jurisdiction to consider an appeal filed by a former Foreign Service National employee of an embassy because grievant was not a United States citizen. (22 U.S.C. 4131(a)(1)). The appeal was dismissed.

OVERVIEW:

{Grievant} was a former Foreign Service National employed by the U.S. Embassy in {Post} who claimed that he was wrongfully terminated and failed to receive severance pay. The Board issued a preliminary order pointing out that it might lack jurisdiction to consider his case. The order requested that grievant submit evidence or argument to the contrary. Grievant did not respond.

The Board concluded that, under Sections 1101(a)(1) and 1101(G) of the Foreign Service Act, it lacked jurisdiction to consider an appeal filed by a former non-U.S. citizen Foreign Service National. The appeal was therefore dismissed.

DECISION: JURISDICTION

I. BACKGROUND

On January 20, 2006, the Foreign Service Grievance Board (Board) received an appeal filed by {Grievant}. The appeal, dated December 30, 2005, was filed directly with the Board.

{Grievant} was employed by the U.S. Embassy in {Post} from 1991-2005 as an information technology specialist. He asserts that he was a Foreign Service National (FSN) for 13 of the 14 years he worked for the Embassy, with his employment status being changed to “Local Engaged Staff”¹ during his last year of employment. {Grievant} alleges that he was wrongfully terminated in April 2005 and that, up until the time he filed this appeal, he had not received any severance pay.

On March 9, 2006, the Board issued an order stating its preliminary conclusion that it lacked jurisdiction in the case. Grievant was given 30 days to submit factual evidence and/or legal argument demonstrating that he qualified as a grievant as defined by the Foreign Service Act of 1980, as amended (Act). The Board received no response from {Grievant}.

II. ISSUE

Whether the Board has jurisdiction in an appeal presented by a former Foreign Service National employee who is not a U.S. citizen.

¹ 6 Foreign Affairs Handbook-5 H-104.1 defines “locally engaged staff” as, “All personnel hired and funded at post such as foreign service nationals, temporary and part-time U.S. Citizens, Third Country Nationals (TCN), and Personal Services Agreement (PSA) employees.” It is an all-encompassing term that, in itself, does not indicate a change in employment status.

III. DISCUSSION AND FINDINGS

Section 1101(a)(1) of the Act, in pertinent part, defines a grievance and the Board's jurisdiction to consider grievances, as:

. . . any act, omission or condition subject to the control of the Secretary which is alleged to deprive a member of the Service who is a citizen of the United States (other than a United States citizen employed under Section 311 who is not a family member) of a right or benefit authorized by law or regulation or which is otherwise a source of concern or dissatisfaction to the member (Emphasis added.)

Section 1104 of the Act, which permits former members of the Service to file grievances in limited circumstances, incorporates the same jurisdictional requirement that the former member of the service be a U.S. citizen. The Board has previously considered the issue of whether it has jurisdiction to consider a grievance filed by a Foreign Service National employee (or former FSN employee). In FSGB Case No. 2001-018, the Board concluded that although FSNs were members of the Service under the terms of Sections 1101 and 1104, its jurisdiction extended only to members of the Service who were also U.S. citizens. The Federal courts have likewise determined that the statutory grievance procedures did not extend to non-U.S. citizen employees of the Foreign Service. *See Romen Tenreiro Dos Santos v. the United States*, 19 Cl. Ct. 681 (1990) and *Hamid Ashgar v. the United States*, 23 Cl. Ct. 226 (1991).

According to his submissions, {Grievant} was an FSN during the time he was employed by the U.S. Embassy in {Post}. There is no evidence or allegation in the record that {Grievant} is a U.S. citizen. Although given the opportunity to do so, he did not present any evidence or argument to the contrary or provide another basis for establishing eligibility to file a grievance with the Board. Based on the record in this

matter, the Board concludes that {Griwant} was a non-U.S. citizen FSN² during the relevant time period and that therefore it lacks jurisdiction to hear this matter.

IV. DECISION

The appeal is dismissed for lack of jurisdiction.

² Although {Griwant} asserted that his employment status changed to “local engaged staff” during his last year of employment, he did not provide any information explaining the precise nature of that change. Since the requirement that a grievant be a U.S. citizen applies under all circumstances, the Board did not deem it relevant to analyze further the possible distinction between the two employment categories.