



Emergency Evacuation and Medical Evacuation from Foreign Service Officers' Posts Abroad

Issue

The Department of State (“DoS”)’s refusal to include domestic partners of foreign service officers (“FSOs”) in the Government-funded Emergency Evacuation and Medical Evacuation from Post singles out and burdens gay and lesbian FSOs with non-reimbursement of emergency or medical evacuation expenses of their same-sex domestic partner.

Short Answer

DoS should amend the definition of “family” in the Department of State Standardized Regulations and the definition of “eligible family member” definition in the Foreign Affairs Manual to include domestic partners.¹

Background

DoS determines the amount of benefits to be paid to FSOs including government funding of emergency and medical evacuation from post. Overall, same-sex domestic partners of gay and lesbian FSOs only receive a small portion of the benefits provided to different-sex spouses. Of these benefits, reimbursements for evacuation,² made possible for spouses so long as they are included in the FSO’s travel orders, are one of the most crucial. Whether persons are placed in the travel orders of FSOs depends partly on section 040m of the Department of State Standardized Regulations (“DSSR”).³ Chapter Nine of the Foreign Service Act also authorizes travel benefits for the “families” of FSOs⁴ with the Foreign Affairs Manual (“FAM”) providing guidance related to official travel. The DSSR and FAM do not consider domestic partners as spouses and the current definitions of “family” or “eligible family members” do not include domestic partners, unlike different-sex spouses. Taken together, domestic partners are not included as family, unlike different-sex spouse, and thus their expenses are ineligible for reimbursement.⁵

DoS’s statement on *Members of Household: Family Members not on Official Travel Orders* states that “[t]he Standardized Regulations (040m) specify those family members who are eligible to be placed on an employee’s [travel] orders.”⁶ Because placement on travel orders will likely have the greatest effect on expanding benefits (including medical or emergency evacuation from post) to domestic

¹ The Defense of Marriage Act (DOMA), Pub. L. No. 104-199, §3, *codified at* 1 U.S.C. § 7 (1997), does not dictate the meaning of “family,” and thus the proposed change would not violate DOMA.

² The Foreign Service Act (FSA) authorizes payment for travel of service members and their families to obtain medical care while abroad in a locality where there is no suitable facility to provide such care. *See* FSA § 901(5), *codified at* 22 U.S.C. § 4081(5) (2006). It also provides for the removal of family members where there is imminent danger. *See* FSA § 901(7), *codified at* 22 U.S.C. § 4081(7) (2006).

³ *See* DEP’T OF STATE, *Members of Household: Family Members Not on Employee’s Official Travel Orders*, <http://www.state.gov/m/dghr/flo/c23137.htm> (hereinafter “*Members of Household*”).

⁴ 14 FAM 532.9 (2006).

⁵ Although Secretary Albright in December 2000 did announce a new Member of Household policy which included SSDPs who were not family members but were to be “welcomed” by the foreign post, the policy does not adequately address the inequities discussed here. *See* 3 FAM 4180, *Members of Household* (2007), *supra* note 3. *See also* Bob Guldin, *Not Quite Family: “Members of Household” at State*, FOREIGN SERV. J., June 2004, at 17.

⁶ *See Members of Household*, *supra* note 3.



partners, it is very important to amend the DSSR regarding this issue. Because the purpose of the FAM is to uniformly implement all Department regulations, the FAM should also be amended accordingly. A corresponding change in the FAM definition would provide uniform guidance to Chiefs of Mission administering leave programs and would increase certainty for FSOs.

First, this means that a potential emergency or medical evacuation, an already stressful situation, would become even more burdensome for FSOs with domestic partners. This inequity in not including domestic partners in travel orders—and thus the government-funded evacuations—places an enormous burden on gay and lesbian FSOs, which has in turn led Department employees to actively avoid FSO service,⁷ and impairs the Department’s ability to attract and retain a qualified workforce. This second-class treatment of the partners of gay and lesbian FSOs is a disincentive for qualified employees to become or remain as FSOs.⁸

Whether the partner of an FSO is a different-sex spouse or same-sex domestic partner should make no difference as to whether they are reimbursed for evacuation costs during the FSO’s service to their country. FSOs with a domestic partner should be entitled to parity in benefits.⁹ Serving as an FSO is difficult enough and is crucial to our nation’s interests. Distracting these FSOs with unfair treatment and extra burdens in the event of an evacuation is poor policy. Thus, the failure to fund the emergency and medical evacuation of domestic partners singles out and burdens gay and lesbian FSOs while impeding the ability of the DoS to retain and recruit these FSOs.

Recommendation

The Under Secretary for Management of the Department of State should direct the Assistant Secretary for Administration, the Director General of the Foreign Services, and the Director of Human Resources to amend the definition of “family” in Section 040(m) of the DSSR and the definition of “eligible family member” in 14 FAM 511.3 to include domestic partners.

Authority

The Under Secretary for Management “prescribes rules and regulations pursuant to authority vested in the Secretary [of State]” unless authority has been delegated otherwise.¹⁰ The Director General of the Foreign Service and Director of Human Resources reports directly to the Under Secretary for Management, coordinates human resources polices, and is responsible for the operation of Foreign Service.¹¹ The Assistant Secretary for Administration, who also reports to the Under Secretary for

⁷ See Ajit Joshi, *Speaking Out: Achieving Full Diversity in the Foreign Service*, FOREIGN SERV. J., Nov. 2004, at 13, 17.

⁸ *Id.*

⁹ Whether parity in specifically FSO benefits would necessarily be costly to the government is uncertain at this time. However, a 2004 Congressional Budget Office study on the budgetary impact of Federal government recognition of same-sex marriages suggests that relationship recognition would actually lead to a net reduction in Federal expenditures overall. See CONG. BUDGET OFFICE, *The Potential Budgetary Impact of Recognizing Same-Sex Marriages* (June 21, 2004) <http://www.cbo.gov/ftpdocs/55xx/doc5559/06-21-SameSexMarriage.pdf>. A state level study suggests similar results. See, e.g., M.V. LEE BADGETT, ET AL., THE IMPACT OF THE COLORADO DOMESTIC PARTNERSHIP ACT ON COLORADO’S STATE BUDGET 1 (The Williams Institute ed. 2006) (predicting a net benefit to Colorado of \$1.2 million largely from decreasing use of public benefits and increased tax revenues).

¹⁰ 1 FAM 044.1. See also 3 FAM 1312(b) (stating that by Delegation of Authority No. 148, dated Aug. 4 1981, the Secretary delegated all of his functions under the Foreign Service Act to the Under Secretary for Management except for enumerated reserved functions).

¹¹ 1 FAM 231.1 (2005).



Management, chairs the Standing Committee on Directives which guides and annually reviews the State Department's Directives Program, including the FAM. The Assistant Secretary for Administration also supervises the Deputy Assistant for Operations who in turn supervises the Office of Allowances, which in turn develops policies and regulations to administer allowances and benefits program abroad under the DSSR.¹² As the individual in charge of the relevant personnel, policies, and procedures, the Under Secretary for Management has the authority to implement the recommendation.

¹² See DEP'T OF STATE, *Office of Allowances*, <http://aoprals.state.gov/>.