

§ 404.461

elsewhere. The period need not have been continuous and the requirement is satisfied if the periods of U.S. residence added together give a total of 5 full years.

(7) The provisions described in paragraph (d) of this section shall not apply if the beneficiary is a citizen or resident of a country with which the United States has a totalization agreement in force, except to the extent provided by that agreement.

[32 FR 19159, Dec. 20, 1967, as amended at 34 FR 13366, Aug. 19, 1969; 52 FR 8249, Mar. 17, 1987; 52 FR 26145, July 13, 1987; 60 FR 17445, Apr. 6, 1995; 62 FR 38450, July 18, 1997; 69 FR 51555, Aug. 20, 2004; 74 FR 48856, Sept. 25, 2009]

§ 404.461 Nonpayment of lump sum after death of alien outside United States for more than 6 months.

Where an individual dies outside the United States after January 1957 and no monthly benefit was or could have been paid to him for the month preceding the month in which he died because of the provisions described in § 404.460, no lump-sum death payment may be made upon the basis of the individual's earnings record.

§ 404.462 Nonpayment of hospital and medical insurance benefits of alien outside United States for more than 6 months.

No payments may be made under part A (hospital insurance benefits) of title XVIII for items or services furnished to an individual in any month for which the prohibition described in § 404.460 against payment of benefits to an individual outside the United States for more than six full consecutive calendar months is applicable (or would be if he were entitled to any such benefits). Also, no payments may be made under part B (supplementary medical insurance benefits) of title XVIII for expenses incurred by an individual during any month the individual is not paid a monthly benefit by reason of the provisions described in § 404.460 or for which no monthly benefit would be paid if he were otherwise entitled thereto.

20 CFR Ch. III (4-1-13 Edition)

§ 404.463 Nonpayment of benefits of aliens outside the United States; "foreign social insurance system," and "treaty obligation" exceptions defined.

(a) *Foreign social insurance system exception.* The following criteria are used to evaluate the social insurance or pension system of a foreign country to determine whether the exception described in § 404.460(b) to the alien nonpayment provisions applies:

(1) *Social insurance or pension system.* A *social insurance system* means a governmental plan which pays benefits as an earned right, on the basis either of contributions or work in employment covered under the plan, without regard to the financial need of the beneficiary. However, a plan of this type may still be regarded as a *social insurance system* though it may provide, in a subordinate fashion, for a supplemental payment based on need. A *pension system* means a governmental plan which pays benefits based on residence or age, or a private employer's plan for which the government has set up uniform standards for coverage, contributions, eligibility, and benefit amounts provided that, in both of these types of plans, the financial need of the beneficiary is not a consideration.

(2) *In effect.* The social insurance or pension system of the foreign country must be *in effect*. This means that the foreign social insurance or pension system is in full operation with regard to taxes (or contributions) and benefits, or is in operation with regard to taxes (or contributions), and provision is made for payments to begin immediately upon the expiration of the period provided in the law for acquiring earliest eligibility. It is not *in effect* if the law leaves the beginning of operation to executive or other administrative action; nor is it in effect if the law has been temporarily suspended.

(3) *General application.* The term of *general application* means that the social insurance or pension system (or combination of systems) covers a substantial portion of the paid labor force in industry and commerce, taking into consideration the industrial classification and size of the paid labor force and the population of the country, as well

as occupational, size of employer, and geographical limitations on coverage.

(4) *Periodic benefit or actuarial equivalent.* The term *periodic benefit* means a benefit payable at stated regular intervals of time such as weekly, biweekly, or monthly. *Actuarial equivalent* of a periodic benefit means the commutation of the value of the periodic benefit into a lump-sum payment, taking life expectancy and interest into account.

(5) *Benefits payable on account of old age, retirement, or death.* The requirement that benefits be payable *on account of old age, retirement, or death*, is satisfied if the foreign social insurance plan or system includes provision for payment of benefits to aged or retired persons and to dependents and survivors of covered workers. The requirement is also met where the system pays benefits based only on old age or retirement. The requirement is not met where the only benefits payable are workmen's compensation payments, cash sickness payments, unemployment compensation payments, or maternity insurance benefits.

(6) *System under which U.S. citizens who qualify may receive payment while outside the foreign country.* The foreign social insurance or pension system must permit payments to qualified U.S. citizens while outside such foreign country, regardless of the duration of their absence therefrom and must make the payments without restriction or qualification to these U.S. citizens at full rate, or at the full actuarial value. The foreign system is considered to pay benefits at the full rate if the U.S. citizen receives the full benefit rate in effect for qualified beneficiaries at the time of his award, whether he is then inside or outside the paying country; and he continues to receive the same benefit amount so long as he remains outside that country, even though he may not receive any increases going into effect after his award provided that in those other countries in which such increases are denied to beneficiaries, they are denied to all beneficiaries including nationals of the paying country.

(7) *List of countries which meet the social insurance or pension system exception in section 202(t)(2) of the act.* The following countries have been found to

have in effect a social insurance or pension system which meets the requirements of section 202(t)(2) of the Act. Unless otherwise specified, each country meets such requirements effective January 1957. The effect of these findings is that beneficiaries who are citizens of such countries and not citizens of the United States may be paid benefits regardless of the duration of their absence from the United States unless for months beginning after June 1968 they are residing in a country to which payments to individuals are being withheld by the Treasury Department pursuant to the first section of the Act of October 9, 1940 (31 U.S.C. 123). Further additions to or deletions from the list of countries will be published in the FEDERAL REGISTER.

Antigua and Barbuda (effective November 1981)
 Argentina (effective July 1968)
 Austria (except from January 1958 through June 1961)
 Bahamas, Commonwealth of the (effective October 1974)
 Barbados (effective July 1968)
 Belgium (effective July 1968)
 Belize (effective September 1981)
 Bolivia
 Brazil
 Burkina Faso, Republic of (formerly Upper Volta)
 Canada (effective January 1966)
 Chile
 Colombia (effective January 1967)
 Costa Rica (effective May 1962)
 Cyprus (effective October 1964)
 Czechoslovakia (effective July 1968)
 Denmark (effective April 1964)
 Dominica (effective November 1978)
 Dominican Republic (effective November 1984)
 Ecuador
 El Salvador (effective January 1969)
 Finland (effective May 1968)
 France (effective June 1968)
 Gabon (effective June 1964)
 Grenada (effective April 1983)
 Guatemala (effective October 1978)
 Guyana (effective September 1969)
 Iceland (effective December 1980)
 Ivory Coast
 Jamaica (effective July 1968)
 Liechtenstein (effective July 1968)
 Luxembourg
 Malta (effective September 1964)
 Mexico (effective March 1968)
 Monaco
 Netherlands (effective July 1968)
 Nicaragua (effective May 1986)
 Norway (effective June 1968)
 Panama

§ 404.464

20 CFR Ch. III (4-1-13 Edition)

Peru (effective February 1969)
Philippines (effective June 1960)
Poland (effective March 1957)
Portugal (effective May 1968)
San Marino (effective January 1965)
Spain (effective May 1966)
St. Christopher and Nevis (effective September 1983)
St. Lucia (effective August 1984)
Sweden (effective July 1966)
Switzerland (effective July 1968)
Trinidad and Tobago (effective July 1975)
Trust Territory of the Pacific Islands (Micronesia) (effective July 1976)
Turkey
United Kingdom
Western Samoa (effective August 1972)
Yugoslavia
Zaire (effective July 1961) (formerly Congo (Kinshasa))

(b) *The “treaty obligation” exception.* It is determined that the Treaties of Friendship, Commerce, and Navigation now in force between the United States and the Federal Republic of Germany, Greece, the Republic of Ireland, Israel, Italy, and Japan, respectively, create treaty obligations precluding the application of § 404.460(a) to citizens of such countries; and that the Treaty of Friendship, Commerce, and Navigation now in force between the United States and the Kingdom of the Netherlands creates treaty obligations precluding the application of § 404.460(a) to citizens of that country with respect to monthly survivors benefits only. There is no treaty obligation that would preclude the application of § 404.460(a) to citizens of any country other than those listed above.

[32 FR 19159, Dec. 20, 1967, as amended at 43 FR 2628, Jan. 18, 1978; 52 FR 8249, Mar. 17, 1987]

§ 404.464 How does deportation or removal from the United States affect the receipt of benefits?

(a) *Old-age or disability insurance benefits.* (1) You cannot receive an old-age or disability benefit for any month that occurs after the month we receive notice from the Secretary of Homeland Security or the Attorney General of the United States that you were:

(i) Deported under the provisions of section 241(a) of the Immigration and Nationality Act (INA) that were in effect before April 1, 1997, unless your deportation was under:

(A) Paragraph (1)(C) of that section; or

(B) Paragraph (1)(E) of that section and we received notice of your deportation under this paragraph before March 3, 2004;

(ii) Removed as deportable under the provisions of section 237(a) of the INA as in effect beginning April 1, 1997, unless your removal was under:

(A) Paragraph (1)(C) of that section; or

(B) Paragraph (1)(E) of that section and we received notice of your removal under this paragraph before March 3, 2004; or

(iii) Removed as inadmissible under the provisions of section 212(a)(6)(A) of the INA as in effect beginning April 1, 1997.

(2) Benefits that cannot be paid to you because of your deportation or removal under paragraph (a)(1) of this section may again be payable for any month subsequent to your deportation or removal that you are lawfully admitted to the United States for permanent residence. You are considered lawfully admitted for permanent residence as of the month you enter the United States with permission to reside here permanently.

(b) *Dependents or survivors benefits.* If an insured person on whose record you are entitled cannot be paid (or could not have been paid while still alive) an old-age or disability benefit for a month(s) because of his or her deportation or removal under paragraph (a)(1) of this section, you cannot be paid a dependent or survivor benefit on the insured person’s record for that month(s) unless:

(1) You are a U.S citizen; or

(2) You were present in the United States for the entire month. (This means you were not absent from the United States for any period during the month, no matter how short.)

(c) *Lump sum death payment.* A lump sum death payment cannot be paid on the record of a person who died:

(1) In or after the month we receive from the Secretary of Homeland Security or the Attorney General of the United States notice of his or her deportation or removal under the provisions of the INA specified in paragraph