

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
UNITED STATES DEPARTMENT OF JUSTICE  
WASHINGTON, DC 20579

In the Matter of the Claim of	}	
	}	
IRENE MICHAEL GUSHO	}	Claim No. ALB-083
	}	
	}	Decision No. ALB-246(R)
	}	
Against the Government of Albania	}	

AMENDED PROPOSED DECISION

This claim against the Government of Albania is based upon the confiscation of real and personal property located in the city of Pogradec.

In a Proposed Decision issued on January 28, 1997, which became final on March 25, 1997, the Commission denied this claim because it was not established either that the claimant was living in the United States on April 18, 1995, or that the claim was owned by someone living in the United States for at least half the time between April 18, 1995, and the date the claim arose, as required in the Agreed Minute to the U.S.-Albania Claims Settlement Agreement. *Agreement Between the Government of the United States and the Government of the Republic of Albania on the Settlement of Certain Outstanding Claims*, March 10, 1995 (entered into force April 18, 1995) ("Settlement Agreement"). In the absence of an objection from the claimant, that decision was then entered as final on March 25, 1997.

By letters dated July 14, 2006, August 11, 2006 and October 23, 2006, the Commission notified the claimant that in a Diplomatic Note dated April 27, 2006, the Albanian Minister of Foreign Affairs had advised the United States Embassy in Albania that it accepted and agreed with a proposal made by the United States Government on November 18, 2005, to delete the residency requirement from the Agreed Minute to the Settlement Agreement.

Based on this modification of the Settlement Agreement, the Commission concludes that the claimant is now entitled to further consideration of her claim. Accordingly, the entry of the previous decision on this claim as final on March 25, 1997, is hereby ordered withdrawn, and an Amended Proposed Decision shall issue in its place, as detailed below.

In the course of its further review of the file in this claim, the Commission also requested certain additional information and documentation from the claimant in support of her claim. In response to this request, the claimant's nephew contacted the Commission on April 30, 2007, and stated that his aunt would respond by the end of May 2007. Not having heard from the claimant by that date, the Commission sent another letter to the claimant dated July 24, 2007, again requesting the additional information. To date, however, the claimant has not responded.

Despite the fact that the claimant has not responded to the Commission letters, the Commission has again carefully reviewed the record before it. From this review, it appears that claimant, a United States national by birth, seeks compensation for real property (including a lot, a vineyard, a chestnut grove and a shop site), as well as a truck, all said to have been expropriated by the Albanian government in 1955. At that time, according to the claimant, the property was owned by her late husband, Loni Gusho, who died in Albania in 1993.\*

In all of its correspondence to the claimant, in addition to requesting further information in support of the claim, the Commission has requested evidence of the United States nationality of the claimant's husband. However, the claimant has provided no such evidence.

The International Claims Settlement Act ("ICSA") mandates that the Commission decide claims in accordance with, *inter alia*, "[t]he applicable principles of international law." ICSA section 4(a)(2), 22 U.S.C. 1623(a)(2). It is a well-established principle of international law, which this Commission has applied without exception, that a claim may be found compensable only if the property

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\*The Commission notes that the claimant assigned her interest in a claim owned by her father, Michael Pano Toma, to her brother, Thomas Michael Toma, Claim No. ALB-072, Dec. No. 268(R)(2006).

which is the subject of the claim was owned by a national of the United States when the property was expropriated or otherwise taken. *See, e.g., Claim of EUGENIA D. STUPNIKOV Against Yugoslavia*, Claim No. Y-2-0071, Decision No. Y-2-0003 (1967); *Claim of ILONA CZIKE Against Hungary*, Claim No. HUNG-2-0784, Decision No. HUNG-2-191 (1976); *Claim of JOSEPH REISS Against the German Democratic Republic*, Claim No. G-2853, Decision No. G-2499 (1981); *Claim of TRANG KIM Against Vietnam*, Claim No. V-0014, Decision No. V-0001 (1982).

This principle has also been recognized by the courts of the United States. *See e.g., Haas v. Humphrey*, 246 F.2d 682 (D.C. Cir. 1957), *cert. denied* 355 U.S. 854 (1957).

According to the claimant's statements, the property which is the subject of her claim was taken by the Albanian communist regime in 1955 when it was in the ownership of her husband, an Albanian national. Accordingly, when the property in question was confiscated by the Albanian government, it was not owned by a national of the United States, as required for a favorable determination under the ICSA.

Additionally, Section 509.5(b) of the Commission's regulations provides:

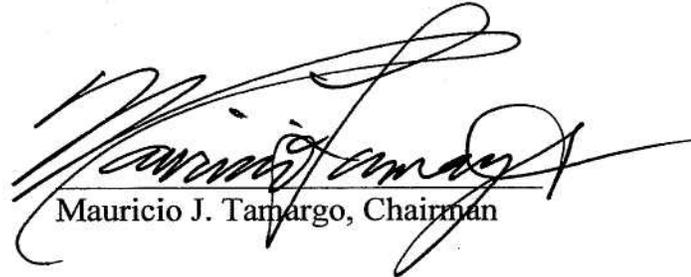
The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim.

45 C.F.R. 509.5(b)(2007).

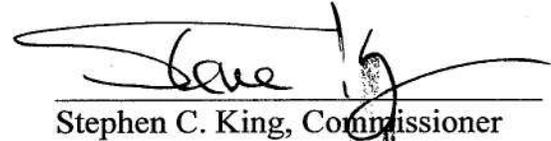
Based on its review of the record before it, the Commission finds that the claimant has not met the burden of proof in that she has failed to submit evidence sufficient to establish the existence or ownership of the property which is the subject of her claim or the date and circumstances of its confiscation, or to establish that the property was owned by a national of the United States at the time of confiscation by the Albanian government. Accordingly, the Commission is constrained to conclude that this claim is not compensable under the terms of the Settlement Agreement. The claim must therefore again be and is hereby denied.

Dated at Washington, DC and  
entered as the Amended Proposed  
Decision of the Commission.

JAN 24 2008



Mauricio J. Tamargo, Chairman



Stephen C. King, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after service or receipt of notice of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. 509.5 (e) and (g) (2007).



The Governments of the United States and Albania concluded an agreement for en bloc settlement of claims of United States nationals against Albania on March 10, 1995. *Agreement Between the Government of the United States and the Government of the Republic of Albania on the Settlement of Certain Outstanding Claims*, March 10, 1995 (entered into force April 18, 1995) ("Settlement Agreement"). Claims covered by the Settlement Agreement are

the claims of United States nationals (including natural and juridical persons) against Albania arising from any nationalization, expropriation, intervention, or other taking of, or measures affecting, property of nationals of the United States prior to the date of this agreement[.]

Settlement Agreement, Article 1(a).

The Agreed Minute to the Settlement Agreement further provides:

For purposes of article 1, the term "United States nationals" shall include dual United States-Albanian nationals only if those nationals are domiciled in the United States currently or for at least half the period of time between when the property was taken and the date of entry into force of the agreement.

In effect, this residency requirement limits the Commission's jurisdiction over the claims of dual nationals to those cases where the owner of the claim either (1) was domiciled in the United States on April 18, 1995 (the effective date of the Settlement Agreement), or (2) was domiciled in the United States for at

least half the period of time between the date the property was expropriated and April 18, 1995.

Claimant here, a United States national by birth, seeks compensation for real property (including a lot, a vineyard, a chestnut grove and a shop site), as well as a truck, all said to have been expropriated by the Albanian government in 1955. At that time, according to claimant, the property was owned by her late husband, Loni Gusho, who died in Albania in 1993.

Unfortunately, the information provided by claimant to date is not sufficient to establish her right to compensation. It appears that claimant is a dual U.S.-Albanian national, because her father was an Albanian citizen. Under Albanian law, claimant retains Albanian nationality notwithstanding her U.S. nationality by birth.

Because claimant is a dual United States-Albanian national, the Commission is constrained to apply the residency requirement in the Agreed Minute to the Settlement Agreement. But there is no evidence that claimant was living in the United States on April 18, 1995; nor is there any evidence that the owner of the claim (claimant's late husband, then -- upon his death -- claimant) lived in the United States for at least half of the approximately 40 years between 1955 and April 1995.

Section 531.6(d) of the Commission's regulations provides:

The claimant shall be the moving party, and shall have the burden of proof on all issues involved in the determination of his or her claim.

45 C.F.R. 531.6(d) (1995).

The Commission finds that claimant here has not met the burden of proof in that she has failed to provide information to establish either that she was living in the United States on April 18, 1995 or that the owner of the claim (claimant's late husband, then claimant herself) lived in the United States for at least half the time between April 18, 1995 (the effective date of the Settlement Agreement) and 1955 (the date the claim arose). In the absence of such evidence, the Commission is unable to find that the residency requirement in the Agreed Minute to the Settlement Agreement is satisfied.

Accordingly, while the Commission sympathizes with claimant for the loss of her family's property, it cannot find -- on the evidence submitted to date -- that this claim is compensable under the terms of the Settlement Agreement. The claim therefore must be and is hereby denied.

The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, DC and entered as the Proposed Decision of the Commission.

JAN 28 1997

  
Delissa A. Ridgway, Chair

  
John R. Lacey, Commissioner

  
Richard T. White, Commissioner

This decision was entered as the Commission's  
Final Decision on MAR 25 1997

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after service or receipt of notice of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. 531.5 (e) and (g) (1995).