

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

In the Matter of the Claim of	}	
	}	
KRISTINA PONI	}	Claim No. ALB-291
	}	
	}	Decision No. ALB-264(R)
	}	
Against the Government of Albania	}	

AMENDED PROPOSED DECISION

This claim against the Government of Albania is based upon the confiscation of real property located in Qyteze, in the District of Devoll.

In a Proposed Decision issued on January 28, 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 1995 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").

By an undated letter received at the Commission on April 11, 1997, claimant objected to the Proposed Decision and requested reconsideration of

her claim by the Commission. However, after careful consideration in a Hearing on the Record held on July 31, 1998, the Commission concluded in a Final Decision issued on that date that it had no choice but to affirm its denial of claimant's claim based on the residency requirement in the Agreed Minute to the Settlement Agreement.

By letters dated July 10, 2006 and August 9, 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 Accordingly, the Final Decision in this claim issued on July 31, 1998, is hereby withdrawn, and an Amended Proposed Decision shall issue in its place, as detailed below.

In connection with its further review of claimant's claim file, the Commission also requested certain additional information and documentation from the claimant in support of the claim for confiscation of the subject

property. By letter dated September 25, 2007, the claimant submitted additional documentation including a Certificate of Family Composition dated October 4, 2007, and two certificates by the Mayor of Qyteze dated March 20, 1996, and March 25, 1996, listing numerous small plots of land in the vicinity of the village totaling 6.1 hectares which were said to have been owned by her father-in-law, Andrea Dhimitri Poni.

The Commission has carefully reviewed the record before it, including the recent submissions. From this review, it appears that claimant, a United States national by birth, seeks compensation for land said to have been expropriated by the Albanian government in 1945. At that time, according to the claimant, the property was owned by her father-in-law, Andre Demetri (also known as Andre Demetri Poni or Pones), who was naturalized as a United States citizen in 1926. Claimant states that her husband, Demetri (Dhimitri) Poni – a U.S. national by birth – inherited the claim for the property upon the death of his father in 1967; and that she inherited the claim for the property upon the death of her husband in 1993. The property is said to measure “approximately 6 acres”.\*

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\*The Commission notes that claimant previously received an award for her proportional share in the claim of her father, Anastas P. Michael, for the loss of his agricultural property in Qyteze. Claim No. ALB-316, Dec. No. ALB-306(R)(2006).

With regard to the ownership of these properties, however, research conducted by the Commission's independent consultant in Albania, who has searched the Korce Cadastral Office, has failed to disclose any archival confirmation of the information set forth in the above-described Certificates dated March 20, 1996, and March 25, 1996, issued by the Mayor of Qyteze-Korce. Further, the consultant has advised the Commission that under Albanian law, such Certificates are not sufficient to establish title to real property, because a village mayor does not have legal authority to make such determinations. Instead, the consultant stated that title to property can only be determined by the court in the vicinity of where the property is located.

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).

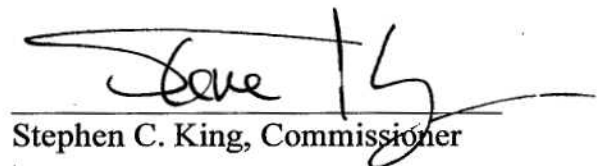
In view of the foregoing, the Commission is constrained to conclude that the claimant has not met the burden of proof in establishing that the property for which she has claimed was owned by her father-in-law at the time of confiscation. Accordingly, her claim must again be and is hereby denied.

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).



claim by the Commission.<sup>1</sup> Because claimant has not requested an oral hearing, the Commission issues this Final Decision following a hearing on the record, based on its de novo review of the evidence submitted in support of the claim.

In her letter of objection, claimant states that her father-in-law, who held this claim from the time it arose in 1945, lived in the United States from 1926 until a year before his death in Albania in 1967. Claimant contends that had her father-in-law, who lived in the United States for 22 years, lived here an additional 3 years, this claim would have been eligible for compensation. Claimant argues that a person's death should not be a reason to exclude his heirs from a "rightful claim."

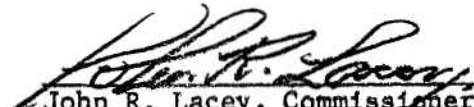
As the Proposed Decision explained, the residency requirement in the U.S.-Albania Claims Settlement Agreement effectively limits the Commission's jurisdiction to those cases where the owner of the claim either (1) was domiciled in the United States on April 18, 1995 (the effective date of the Settlement Agreement), or (2) was domiciled in the United States for at least half the period of time between the date the property was confiscated and April 18, 1995. It is undisputed that this claim is not such a case.

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<sup>1</sup> The Proposed Decision was returned to the Commission by the U.S. Postal Service on March 26, 1997, and remailed to the claimant the same day to her new address.

The Commission sympathizes with claimant and would much prefer to treat the cases of all U.S. national claimants alike, rather than distinguishing among them on the basis of residence. However, under its authorizing legislation, the Commission is required to apply the Settlement Agreement as written. The Commission unfortunately has no discretion to disregard or refrain from applying any provision of the Agreement. The Commission is therefore constrained to conclude that the Proposed Decision must be and it is hereby affirmed.<sup>2</sup> This constitutes the Commission's final determination in this claim.

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

  
John R. Lacey, Commissioner

**JUL 31 1998**

  
Richard T. White, Commissioner

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<sup>2</sup>Because the Commission lacks jurisdiction over this case, claimant should be entitled to relief through the restitution and compensation program being administered by the Government of Albania (if it is not too late to file a claim there). Indeed, the Settlement Agreement between the U.S. and Albania requires that the Government of Albania afford such U.S. nationals the same rights that it affords Albanian nationals to pursue and receive compensation, restitution or any other remedy available under the domestic restitution and compensation procedures established by that government.



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In the Matter of the Claim of

KRISTINA PONI

Against the Government of Albania

Claim No. ALB-291

Decision No. ALB-264

PROPOSED DECISION

This claim against the Government of Albania is based upon the alleged confiscation of real property located in Qyteze, in the District of Devoll.

As a preliminary matter, the Commission notes that this claim was received by the Commission after the expiration of the Commission's filing deadline of December 29, 1995. The Commission nevertheless has decided to accept the claim for consideration.

Under section 4(a) of Title I of the International Claims Settlement Act of 1949 ("ICSA"), as amended, the Commission has jurisdiction to

receive, examine, adjudicate, and render final decisions with respect to claims of . . . nationals of the United States included within the terms of . . . any claims agreement on and after March 10, 1954, concluded between the Government of the United States and a foreign government (exclusive of governments against which the United States declared the existence of a state of war during World War II) . . . providing for the settlement and discharge of claims of . . . nationals of the United States against a foreign government, arising out of the nationalization or other

taking of property, by the agreement of the Government of the United States to accept from that government a sum in en bloc settlement thereof.

22 U.S.C. 1623(a) (1994).

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 land said to have been expropriated by the Albanian government in 1945. At that time, according to claimant, the property was owned by her father-in-law, Andre Demetri (also known as Andre Demetri Poni or Pones), who was naturalized as a United States citizen in 1926. Claimant states that her husband, Demetri (Dhimitri) Poni -- a U.S. national by birth -- inherited the claim for the property upon the death of his father in 1967; and that she inherited the claim for the property upon the death of her husband 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.

However, while the claim form indicates that claimant has been living in the United States since August 1995, there is no evidence that she was living in the United States on April 18, 1995. Nor is there any evidence that the owner of the claim (claimant's father-in-law; then, after his death, claimant's husband; then, after his death, claimant herself) lived in the United States for at least half of the approximately 50 years between the expropriation in 1945 and the effective date of the Settlement Agreement, April 18, 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 to establish either that she was living in the United States on April 18, 1995 or that the claim was owned by someone living in the United States for more than half the time between April 1995 and 1945, when 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.

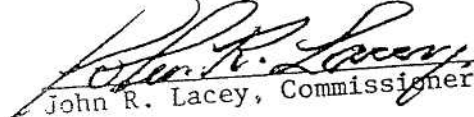
Accordingly, while the Commission sympathizes with claimant for the loss of her family's property, it cannot find -- on the evidence submitted to date -- that this claim is compensable under the terms of the Settlement Agreement. The claim therefore must be and is hereby denied.

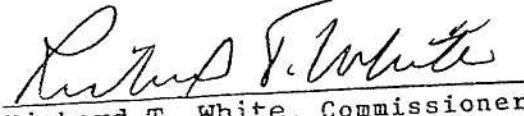
The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

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

  
Delissa M. Ridgway, Chair

JAN 28 1997

  
John R. Lacey, Commissioner

  
Richard T. White, Commissioner

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