

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

MACARIO ROMULO FERNANDEZ
By LETICIA FERNANDEZ,
his wife

Claim No. CU -2863

Decision No. CU -693

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered November 22, 1967. No oral hearing requested.

Hearing on the record held on June 23, 1972.

FINAL DECISION

This claim was filed by LETICIA FERNANDEZ, a Cuban national, on behalf of her husband, MACARIO ROMULO FERNANDEZ because he was outside the United States and was unable to return to this country. The record showed that claimant, born in Cuba, had acquired United States nationality through naturalization on November 8, 1935; and that he had become a naturalized citizen of Cuba after 1951. Accordingly, the claim was denied because the evidence failed to establish that it was owned by a United States national on the date of loss and continuously thereafter until the date of filing with the Commission, a prerequisite to favorable action pursuant to the express provisions of Section 504(a) of the Act.

Claimant's wife objected, contending that claimant had not lost his United States nationality. In support of the objections, she submitted a letter of May 12, 1955 from the Department of State. That letter recites that the State Department had certified under date of January 11, 1955 that claimant had lost his United States nationality on October 15, 1946 by operation of section 404(b) of the Nationality Act of 1940. Said section of the 1940 Act provides for the loss of United States nationality by a naturalized

American who resides for 3 years or more in the country of his origin. However, the letter added that the said certificate of loss of United States nationality was rendered null and void by the decision of the United States Supreme Court in the case of Schneider v. Rusk; and that the records of the State Department do not warrant or support a decision that claimant had lost his United States nationality in any manner.

It is noted that the objections herein relate solely to the question whether claimant lost his United States nationality by residence in his country of origin. However, that is not in issue in this matter. The only question to be considered in this respect is whether claimant lost his United States nationality by becoming a naturalized citizen of Cuba after 1951 in order to practice law and carry on his business in Cuba.

For the purpose of resolving that issue, the Commission directed a letter to claimant's wife under date of September 11, 1967, suggesting an explanation and any comments or information concerning claimant's naturalization as a Cuban citizen. No response was ever received, and the statement by claimant's daughter, Mrs. Leticia Ileana Godoy, that claimant had so acquired Cuban citizenship remains unchallenged in the record. It must be assumed, therefore, that the statement is true, and the Commission so finds.

In the case of Schneider v. Rusk, 377 United States 163(1964), the Supreme Court held that living abroad by a naturalized or a native-born American "in no way evidences a voluntary renunciation of nationality and allegiance." However, that decision left undisturbed the rule that an American citizen can lose his United States nationality by certain voluntary acts. Thus, an American woman who voluntarily applied for and obtained Italian nationality in order to marry a member of the Italian foreign service thereby expatriated herself under the laws of the United States (Savorgnan v. United States, 338 United States 491 (1950), rehearing denied, 339 United States 916 (1950).)

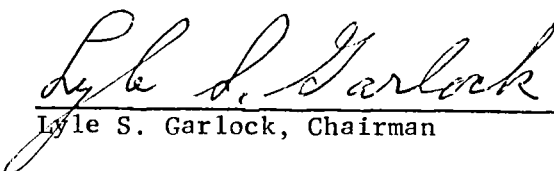
In the Claim of Oscar B. Flannagin, Claim No. CU-2427, the record showed that claimant had acquired Cuban citizenship in order to practice as an architect in Cuba. On the basis of these facts, the State Department issued to that claimant a Certificate of the Loss of the Nationality of the United States "as a result of your naturalization as a Cuban citizen." That claim was denied pursuant to the express provisions of Section 504(a) of the Act, and the Proposed Decision was affirmed without objections on September 25, 1967.

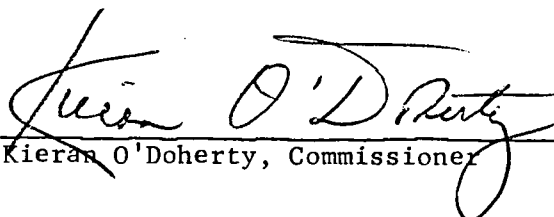
At that time, the Commission was well aware of the implications of the Schneider v. Rusk decision of 1964. The Commission concluded in the Flannagan claim that the act of acquiring Cuban citizenship by naturalization was a voluntary one. The same considerations apply in the instant claim. There is nothing in the record to show that claimant's act of acquiring Cuban citizenship by naturalization was anything but voluntary. The fact that claimant did so in order to practice law and carry on his business in Cuba establishes beyond peradventure of doubt that claimant's actions in these respects were voluntary.

Accordingly, the Commission reaffirms its finding that the record fails to establish that this claim was owned by a United States national on the date of loss and continuously thereafter until the date of filing with the Commission. The Proposed Decision of November 22, 1967 is therefore affirmed in all respects.

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

JUN 30 1972


Lyle S. Garlock, Chairman


Kieran O'Doherty, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

LETICIA FERNANDEZ, in a
representative capacity, for and
in behalf of MACARIO ROMULO
FERNANDEZ

Claim No. CU - 2863

Decision No. CU 693

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$190,000.00, was presented by LETICIA FERNANDEZ, in a representative capacity, for and in behalf of MACARIO ROMULO FERNANDEZ and is based upon the asserted ownership and loss of certain real and personal property, including securities. MACARIO ROMULO FERNANDEZ acquired United States citizenship through naturalization on November 8, 1935; however, information furnished the Commission by the Immigration and Naturalization Service indicates that MACARIO ROMULO FERNANDEZ became a citizen of Cuba after 1951.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

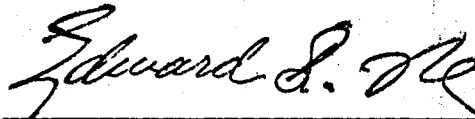
This claim is based upon the asserted ownership of rights and interests in certain real and personal property, including securities, assertedly nationalized by the Government of Cuba during the period 1959 to 1960. The record discloses that MACARIO ROMULO FERNANDEZ acquired United States citizenship through naturalization on November 8, 1935, but that after 1951, he became a citizen of Cuba. Under the Immigration and Nationality Acts of 1940 and 1952 (54 Stat. 1168, 8 U.S.C. 801; 66 Stat. 349, 8 U.S.C. 1481), a United States national lost his nationality by obtaining naturalization in a foreign state.

By Commission letter of September 11, 1967, claimant LETICIA FERNANDEZ, in a representative capacity, for and in behalf of MACARIO ROMULO FERNANDEZ, was advised of the above-mentioned record; and she was invited to submit any available evidence or information concerning the continued United States nationality of MACARIO ROMULO FERNANDEZ. However, no evidence or information in response to this correspondence has been received to date.

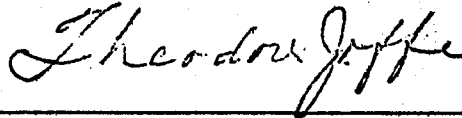
The Commission finds that claimant has not met the burden of proof in that she has failed to establish ownership by a national of the United States of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

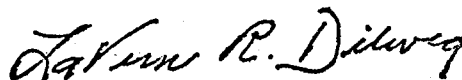
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Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the 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 Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)