

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

In the Matter of the Claim of	}	
	}	
	}	
MARIETA TOLLKUCI	}	Claim No. ALB-069
	}	
	}	Decision No. ALB-244(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 Terove, in the District of Korçe.

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 then-claimant, Kalimaq Gaqi Bicollu, 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").

By a letter dated June 1, 2006, the Commission attempted to notify Mr. Bicolli 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. However, that letter, sent to Mr. Bicolli at his address in Albania, was returned as undeliverable. By letter dated December 15, 2006, the Commission then contacted his sister, MARIETA TOLLKUCI, whom he had identified on his original Statement of Claim as the person to contact with an address in the United States.

In response, Mrs. Tollkuci's son contacted the Commission on January 26, 2007, and stated that his uncle, Kalimaq Gaqi Bicolli, had died in Albania in 2001. He further stated that Mr. Bicolli's widow and two adult children were residing in Canada and that he would ask his mother and the Bicolli family members to contact the Commission. On February 28, 2007, however, Mr. Bicolli's son, Andonaq Bicolli, called the Commission to state that his father never held United States citizenship because he had been born in 1928, prior to the naturalization of his father, George Andon¹ in 1931. On the other hand, he

¹A/k/a/ George (Gaqi) Andon, Gaqi Bicolli or Gaqi Ndoni Bicolli.

noted that his aunt, MARIETA TOLLKUCI, was born in and thus was a United States citizen by birth.

Based on the modification of the Settlement Agreement and the additional information it has recently received, the Commission has reviewed the file in this claim again and has requested certain further information and documentation in support of the claim for confiscation of the subject property, which is said to have taken place in 1946.

By letter received at the Commission on March 14, 2007, MARIETA TOLLKUCI submitted a copy of her United States passport and requested to be considered a claimant in the claim originally filed by her late brother. The Commission is persuaded that her request is meritorious. Accordingly, MARIETA TOLLKUCI is hereby substituted as the claimant in this claim.

According to the Statement of Claim, the property which is the subject of this claim consists of 5.4 hectares of farmland and a building, said to have been expropriated by the Albanian government in the agrarian reform of 1946. At that time, it is asserted that the property was owned by George Andon, who was naturalized as a United States citizen in 1931 and died in Albania in 1963.

In addition to the copy of her U.S. passport, claimant has submitted a copy of her father's death certificate, a Certificate of Family Composition and

various documents of ownership. Based on the claimant's statements and evidence, and based on the results of the investigation by the Commission's independent consultant in Albania, the Commission finds that the claimant's father, George Andon², owned 5.2 hectares (52 dynyms) of land in the Commune of Terove, District of Korce.

The Commission is aware that, on or about August 29, 1945, the Albanian Communist regime promulgated the "Agrarian Reform Law," which provided that land not directly worked by the owner was subject to seizure and redistribution by the government, without payment of compensation to the legal owner. Land Reform Law No. 108, GZ 1945, No. 39. That law was affirmed by the 1946 Albanian constitution, which stated that "land belongs to the tiller." Alb. Const., 1946, Ch. I, Art. 12. Since no exact date of expropriation has been established, the Commission finds that the property in question, namely 5.2 hectares of agricultural land, located in Terove, was nationalized, expropriated or otherwise taken by the Albanian government as of January 1, 1947.

With regard to the claim for the confiscation of a building, the claimant has not submitted any evidence to establish the existence or ownership of any such building, and in a letter to the Commission dated November 26, 2007, but

²The records in Albania verified by the Commission's independent consultant use the name Gaqi Ndoni Bicolli.

received at the Commission on January 18, 2008, she has requested that the Commission proceed with adjudication of her claim based on the present record.

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).

The Commission must conclude that the claimant has not met the burden of proof with regard to the portion of her claim relating to the confiscation of a building. This portion of her claim must therefore be and is hereby denied.

The Commission further finds that this claim for the taking of 5.2 hectares of real property belonging to George Andon passed at the time of his death to the claimant, her mother and brother in equal shares, in accordance with the inheritance laws of Albania. Accordingly, claimant is entitled to an award for the loss of her inherited one-third interest in the claim of her father.

Turning to the value of the property at the time of taking, claimant has asserted that the property was worth "7000 gold francs" but has provided no support for this valuation. Based on comparisons with similar property for which it has granted awards in other claims, the Commission finds that the claimant's father's 5.2 hectares (approximately 12.8 acres) of farmland would have had a

value of at least \$3,500.00 at the time of taking. Accordingly, claimant is entitled herein to an award in the amount of \$1,166.67 for her one-third share in the claim for the confiscated farmland, dating from January 1, 1947 .

In accordance with applicable principles of international law and its decisions in previous claims programs, the Commission also concludes that the claimant is entitled to interest as part of her award, amounting to 6 percent simple interest per annum from January 1, 1947, to April 18, 1995 (the effective date of the Settlement Agreement). Accordingly, claimant is entitled to an interest award equivalent to 289.8 percent of the principal amount of her award, or \$3,381.01.

Under the terms of the U.S.-Albania Settlement Agreement, the United States Government has agreed to advise the Albanian authorities of the issuance of the Commission's awards so as to prevent any double recovery. A copy of this decision thus will be forwarded to the Albanian government in due course.

As for the portions of this claim inherited from George Andon by claimant's mother and brother, 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 the law of

international claims, which has been applied without exception by both this Commission and its predecessor, the International Claims Commission, that a claim may be found compensable only if it was continuously held by a United States national from the date it arose until the date of settlement. *See, e.g., Claim of PETER D. JANUS against Yugoslavia*, Claim No. Y-1721, Decision No. Y-0377 (1954); *Claim of MIA FOSTER against Czechoslovakia*, Claim No. CZ-2696, Decision No. CZ-0001 (1960), *Claim of RICHARD O. GRAW Against Poland*, Claim No. PO-7595, Decision No. PO-8583 (1965).

Accordingly, since there is no indication that claimant's brother or her mother ever held United States nationality, the portions of the claim inherited by them from George Andon must be and are hereby denied due to the lack of continuous ownership of those portions of the claim by a United States national.

The Commission therefore makes the following award, which will be certified to the Secretary of the Treasury for payment in accordance with sections 5, 7, and 8 of Title I of the ICSA (22 U.S.C. §§1624, 1626, and 1627).

A W A R D

Claimant MARIETA TOLLKUCI is entitled to an award in the principal amount of One Thousand One Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$1,166.67), plus interest from January 1, 1947, to April 18, 1995, in the amount

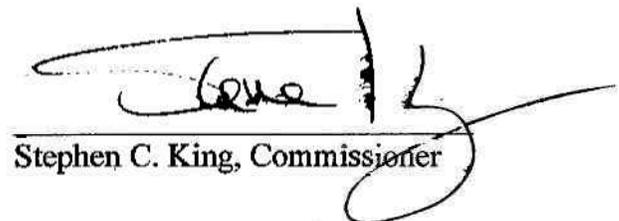
of Three Thousand Three Hundred Eighty-One Dollars and One Cent (\$3,381.01), for a total award of Four Thousand Five Hundred Forty-Seven and Sixty-Eight Cents (\$4,547.68).

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, assertedly a United States national by birth, seeks compensation for 5.4 hectares of property and a building, said to have been expropriated by the Albanian government in the agrarian reform of 1946. Claimant states that the property was then owned by his father, George (Gaqi) Andon, who was naturalized as a United States citizen in 1931. According to claimant, his father returned to Albania as a tourist in 1959, and died there in 1963. The claimant further states that he inherited the right to claim for the property upon the death of his father.

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

Assuming that 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. The claim form appears to indicate that claimant himself has never lived in the United States; and, because claimant's father died in 1963, claimant cannot establish that his father lived in the United

States for at least twenty-four and one-half of the forty-nine years between 1946 (when the property was expropriated) and April 1995 (the effective date of the Settlement Agreement).

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 he has failed to provide information to establish either that he lived in the United States on April 18, 1995 (the effective date of the Settlement Agreement) or that his father lived in the United States for at least half the time between April 18, 1995 and 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.

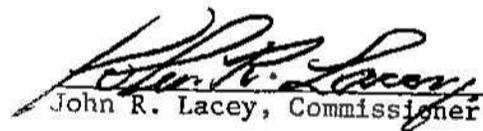
Accordingly, while the Commission sympathizes with claimant for the loss of his family's property, it cannot find -- on the evidence submitted to date -- that this claim is compensable under the terms of the Settlement Agreement. The claim therefore must be and is hereby denied.

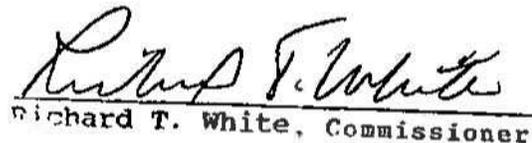
The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

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).