

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

In the Matter of the Claim of	}	
MERGIM H. FAZO		Claim No. ALB-106
Against the Government of Albania		Decision No. ALB-186

PROPOSED DECISION

This claim against the Government of Albania is based upon the alleged confiscation of real and personal property located in Golloberde, Pojan and Zvezde.

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 claimant in this case has stated that the properties which are the subject of his claim, consisting of real and personal property located in the three villages listed above, were confiscated by the Albanian government in 1946 and 1951. At the time of confiscation, according to the claimant, the properties were owned by his grandfather, Besim Hysen Fazo, an Albanian citizen.

The 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 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). Accordingly, to the extent that the property at issue here was owned by an Albanian national at the time of confiscation, the claim is not compensable under the terms of the Settlement Agreement.

However, claimant has also indicated that his own father, Hysen Abdullah Fazo (the son of Besim Hysen Fazo), made cash contributions towards the purchase and construction of the properties. On that basis, claimant's father could possibly be deemed to have an ownership interest in the

properties. The claimant has submitted evidence of both his and his father's United States nationality.

In its General War Claims Program, conducted under Title II of the War Claims Act of 1948, as amended (50 U.S.C. App. 2017), the Commission issued an award to William A. Fazo, a/k/a Hysen Abdullah Fazo, claimant's father, in the amount of \$2,250 for the loss or destruction, in 1944, of a four-room house, two stone barns and fruit trees, including household furnishings and livestock in Golloberde, Albania. (*Claim of WILLIAM A. FAZO, A/K/A HYSEN ABDULLAH FAZO*, Claim No. W-10058, Decision No. W-17238(1966).)

By letter dated March 22, 1996, the Commission requested that the claimant submit evidence to establish his father's ownership of, or contribution towards the purchase of the properties in question; some evidence of the date and circumstances of the alleged confiscations; evidence of the date of his grandfather's death; and copies of the wills of claimant's grandfather and father or a certificate of inheritance identifying claimant as the heir to the property.

On July 10, 1996, the Commission reiterated its request and asked claimant to also provide evidence to distinguish the properties which are the subject of his present claim from those for which his father had received compensation

under the General War Claims Program. The Commission informed claimant that if the requested information and evidence was not received within thirty days, the claim would be submitted for decision on the basis of the existing record. No response or evidence has been received.

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).

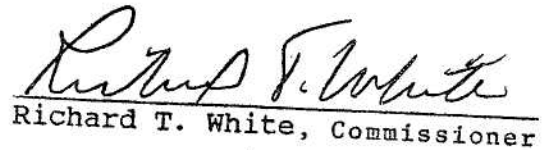
The Commission finds that the claimant has not met the burden of proof in that he has failed to submit supporting evidence to establish his father's ownership of, or his own interest in the loss of the properties which are the subject of his claim. Nor has claimant submitted any evidence of the date and circumstances of confiscation. The claimant is responsible for the production of evidence in this case and thus bears the burden of proof in submitting independent objective evidence. In the absence of such evidence, the Commission is unable to find 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.

OCT 07 1996


Delissa M. Ridgway, Chair


Richard T. White, Commissioner

This decision was entered as the Commission's
Final Decision on DEC 03 1996

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).